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No. 910

# In the Supreme Court of the United States

OCTOBER TERM, 1936

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, AND WILLIAM E. WELCH, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, AND THE EDISON ELECTRIC ILLUMINATING COMPANY OF BOSTON, ET AL., PETITIONERS,

v.

GEORGE P. DAVIS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR PETITIONERS HELVERING AND WELCH

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*America's Capacity to Consume*, Brookings Institution (1934), p. 261 ..... 53
Bakke, *Insurance or Dole*, pp. 193–194 ..... 78
Barkin, Solomon, *The Middle Aged Worker—His Chances in Industry*, in *Social Security in the United States* (1933), p. 20 ..... 59
Barkin, Solomon, *The Older Worker in Industry* (N. Y. Legis. Doc. No. 66, 1933), p. 159 ..... 56, 57
Boyd, *Some of the Problems of the Middle-Aged Man—His Chances of Securing Employment* (U. S. Dept. of Labor, Bureau of Labor Statistics), Bulletin No. 478, 1928, pp. 19–21 ..... 57
Brief in *Cincinnati Soap Co.* v. *United States*, No. 659, October Term, 1936 ..... 90
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Brown, *Development of the Old Age Insurance Provisions*, Law and Contemporary Problems, Vol. III, pp. 186, 191–192 ..... 72
Burns, *Toward Social Security* (1936), p. 140 ..... 79

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*Chicago Standard Budget for Dependent Families*, Chicago Council of Social Agencies (1929), p. 49 ..... 53
*Compulsory Pension Insurance* (International Labour Office, Studies and Reports, Series M, No. 10), p. 212 .. 82, 87
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Conyngton, M., *Industrial Pensions for Old Age and Disability*, Sen. Doc. No. 140, 70th Cong., 1st Sess.:
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Douglas and Director, *The Problem of Unemployment* (1931), p. 32 ..... 54
Douglas, *Real Wages in the United States 1890–1926* (1930), p. 478 ..... 54
Douglas, Paul A., *Social Security in the United States* (1936), pp. 35–36 ..... 69
Dublin, L. I., and Lotka, A. J., *Length of Life* (1936):
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*Economic Insecurity in Old Age* (Social Security Board, 1937) ..... 52, 53, 54, 55, 56, 60, 62, 64, 65, 69, 70, 71
Edwards, G., *Retirement Plans in Industry: Industrial Pension Plans Collapsing*, The Annalist (Nov. 20, 1925):
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Epstein, *Insecurity: A Challenge to America* (1936):
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*Fifteenth Census* (1930), Vol. II, p. 147 ..... 69
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Folke, *Making Relief Respectable*, Annals of Am. Acad. of Political and Social Science (Nov. 1934), pp. 158–159 ... 79
Gebhart, *Funeral Costs, Miscellaneous Contributions on the Costs of Medical Care*, No. 3 (1930), p. 5 ..... 54, 55
Gebhart, *The Reasons for Present Day Funeral Costs*, 1928. 55
Goodrich, Carter, and others, *Migration and Economic Opportunity* (Report of the Study of Population Redistribution, 1936), p. 678 ..... 52, 69
Haber, W., and Stanchfield, P. L., *Unemployment, Relief, and Economic Security* (1936): P. 189 ..... 62
Haig, 14 Encyclopedia of Social Sciences: P. 531 ..... 39
Halsbury's *Laws of England*:
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Hamilton, *Report on Manufactures*, in *Works* (Ham. ed.), Vol. III, pp. 192, 250 ..... 46
*Health Insurance* (Metropolitan Life Ins. Co., Monograph III), Chart I ..... 83
*Hiring and Separation Methods in American Factories*, Monthly Labor Review, Vol. 35, No. 5, pp. 1005–1017, November 1932 ..... 57, 58
Hohman, *British Social Insurance and Minimum Wage* (1932), p. 235 ..... 78
*Industrial Pension Systems in the United States and Canada* (Industrial Relations Counselors, Inc., 1936), p. 19 ..... 65
*International Labour Conference* (Geneva, 1933), p. 121 ..... 78
Jefferson's Manual and Rules of the House of Representatives, Rule XXI, Clause 2 ..... 10
Kehrli, H., *The Operation of the Oregon Old-Age Pension Act*, Commonwealth Review, Vol. XVI, No. 5 (Jan. 1935), pp. 205–221; Oregon University, Bureau of Municipal Records, p. 215 ..... 61
Kiehel, *Unemployment Insurance in Belgium* (1932) p. 193 ..... 78
Latimer, Murray W., *Industrial Pension Systems in the United States and Canada* (1932):
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Martin, *National Income and Its Elements*, National Industrial Conference Board, Inc. (1936), p. 29 ..... 53
*Middle-Aged and Older Workers* (Calif. Dept. of Industrial Relations), Special Bulletin No. 1, p. 35, No. 2, pp. 34, 98 ..... 56
Nassau, M. L., *Old Age Poverty in Greenwich Village* (1915), pp. 70, 72 ..... 62
New York State Dept. of Mental Hygiene, *44th Annual Report* (1935), p. 166 ..... 68
Norton, K., *American Educational Finance*, in Studenski, *Taxation and Public Policy*, ch. VI, pp. 95–107 ..... 70
*Number of Aged in Public and Private Institutions*, 1930, Monthly Labor Review, Feb. 1932, pp. 253–261 ..... 67
*Old Age and Disability Pensions*, Sen. Doc. No. 140, 70th Cong., 1st Sess., p. 99 ..... 63
*Old Age Assistance in Wisconsin*, 1931 (State Board of Control, 1931), p. 8 ..... 69
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*Old Age Security* (N. Y. State Comm.), Legis. Doc. No. 67, 1930, p. 39 ... 60, 61
*Older Worker in Industry, The* (Annual Meeting of Nat. Ass'n of Manufacturers, 1929), p. 12 ... 57
*Older Worker in Maryland, The* (Commissioner of Labor and Statistics, 1930), p. 39 ... 56
*Paupers in Almshouses* (U. S. Bureau of Census, 1923), p. 10 ... 67
Population, Vol. II, p. 147, Golpin, C. T., and Manny, T. B., *Interstate Migrations Among the Native White Population* (U. S. Dept. of Agr., 1934), p. 7 ... 69
Public Assistance Monthly Statistics for the United States (Social Security Board, Feb. 1937), Vol. II, No. 2, p. 2 ... 71
*Public Old-Age Pensions and Insurance in the United States and in Foreign Countries* (U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 561), p. 98, Table II ... 82
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*Report of Departmental Committee on Old Age Pensions* (London, 1919), pp. 9–10 ... 78
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Social Security Board, First Annual Report:
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*Statistical Abstract of the United States* (1934), pp. 73–74 68
Story, *Commentaries on the Constitution of the United States* (5th ed.), Vol. I; Chap. XIV 46
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Taylor, *Social Cost of Industrial Insurance*, p. 251 55
Thomas and Whelpton, *Population Trends in the United States* (1933) 52
Thornthwaite, C. W., *Internal Migration in the United States*, loc. cit., and Bulletin No. 1 of the same study 69
Treasury, Annual Report, fiscal year 1936, p. 44 37
*Unemployment Benefit Plans in the United States and Unemployment Insurance in Foreign Countries* (U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 544), pp. 27–28, 183–360 83
Whelpton, P. K., *An Empirical Method of Calculating Future Population*, Journal American Statistical Assn., Vol. 31, No. 195 (Sept. 1936), pp. 457, 473 50
Witte, E. E., *Old Age Security in the Social Security Act*, Journal of Political Economy, Vol. 45, No. 1:
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Workuston, E., and Butler, C., *Disallowed: The Tragedy of the Means Test* (London, 1936) 79
Wyatt, Birchard E., *Private Group Retirement Plans* (1936):
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# In the Supreme Court of the United States

OCTOBER TERM, 1936

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No. 910

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, AND WILLIAM M. WELCH, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, AND THE EDISON ELECTRIC ILLUMINATING COMPANY OF BOSTON ET AL., PETITIONERS

*v.*

GEORGE P. DAVIS

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT*

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## BRIEF FOR PETITIONERS HELVERING AND WELCH

---

### OPINIONS BELOW

The opinion of the District Court is reported in 18 F. Supp. 1. The opinion of the Circuit Court of Appeals for the First Circuit (R. 26–31) has not yet been officially reported.

### JURISDICTION

The judgment of the Circuit Court of Appeals for the First Circuit was entered on April 14, 1937 (R. 31). The petition for a writ of cer-

certiorari was filed on April 20, 1937, and was granted on April 26, 1937 (R. 33). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the tax imposed upon employees by Section 801 of the Social Security Act is in issue in this case.

2. Whether the tax imposed upon employees by Section 801 is a valid exercise of the power of Congress under Article I, Section 8, Clause 1 of the Constitution.

3. Whether the tax imposed upon employers by Section 804 is a valid exercise of the power of Congress under Article I, Section 8, Clause 1 of the Constitution.

4. Whether a taxpayer under Title VIII has a standing to question the old age benefits provided for in Title II of the Social Security Act.

5. Whether the provision made in Title II of the Social Security Act for old age benefits is a valid exercise of the power of Congress under Article I, Section 8, Clause 1 of the Constitution.

6. Whether, if they be taken together, the taxes imposed by Title VIII of the Social Security Act and the old age benefits contemplated by Title II of the Social Security Act constitute an exercise of powers not granted to Congress.

7. Whether the taxes imposed by Title VIII violate the Fifth Amendment.

## STATUTE INVOLVED

The Social Security Act (Act of August 14, 1935, c. 531, 49 Stat. 620, U. S. C., Supp. II, Title 42, c. 7) is divided into eleven independent titles, many of which might well have been enacted as separate statutes. For the convenience of the Court, the entire Act is set forth in the Appendix, pp. 1–63.

Of the eleven titles only two (Titles VII and XI) are of general application to the entire Act. Title VII provides for the creation of a Social Security Board to perform such functions as may be imposed upon it by other parts of the Act. Title XI consists of general provisions such as certain basic definitions, provision for administrative rules and regulations, a separability clause, a reservation of the right to alter, amend, or repeal any provision of the Act, and finally, a section giving the Act its name, the "Social Security Act."

In this proceeding Title VIII alone, of the substantive titles, can impinge upon respondent's stock equity. No other title can possibly be involved unless it be Title II, which authorizes appropriations and provides terms for benefit payments to individuals.

### Title VIII

Title VIII imposes two distinct types of taxes, each beginning in the calendar year 1937.

It imposes upon *employers, excise* taxes with respect to having individuals in their employ, meas-

ured by wages paid during the calendar year [Section 804]. It also imposes upon *employees, income* taxes measured by wages paid to them during the calendar year [Section 801].

Neither tax is applicable to certain types of employment, such as agricultural labor, domestic service, service for the national or state governments, and services performed by individuals who have attained the age of 65 years. Section 811 (b).

Both the employers' excise tax and the employees' income tax are at the same rate. Sections 801, 804. For the years 1937 to 1939, inclusive, the rate for each tax is fixed at 1 percent. Thereafter the rate increases ½ of 1 percent every 3 years, until, after December 31, 1948, the rate for each tax reaches 3 percent. In the computation of each tax there is required to be included all that the employer pays the employee, except that there need not be included whatever in excess of $3,000 is payable by any one employer to any one of his employees in one year. Section 811 (a).

The tax imposed on employees by Section 801 is collected by the employer of the taxpayer by deducting the amount of the tax from the employee's wages. Section 802 (a). Each employer is made liable for the payment of his employees' taxes, but is indemnified against the claims and demands of any person for the amount of any such payment. *Ibid.*

The proceeds of both taxes are required to be paid into the Treasury of the United States as in-

ternal revenue collections, and neither tax is earmarked in any way. Section 807.

Mechanically, as to payment, filing returns, penalties, and the like, Title VIII operates in the manner customarily employed in internal revenue legislation. *Ibid.*

## TITLE II

Title II relates to Old Age Benefits. These are gratuities (not based on contract, but based on a Congressional direction expressly subject to amendment or repeal [Section 1104]), to be paid by the national government directly to individual persons.[1] The Title states to whom benefits are

[1] This Title should be sharply distinguished from Title I, which provides subventions to *States* in aid of, and to match, state expenditures for aged persons. This Title I authorizes Congress to appropriate not to exceed fifty million dollars for the fiscal year 1935–36 and "an amount sufficient" for subsequent years for federal aid to the states for old age assistance. Old age assistance is defined as public aid extended to "needy individuals" who are above sixty-five years of age and who are not inmates of any public institution.

The federal aid to any State for this purpose is limited to 50 percent of the total expenditures for old age assistance by the State and its political subdivisions and to not more than $15 per month for any individual who is given assistance. This aid must be expended exclusively for the actual payment of old age assistance, but, in addition, aid equal to 5 percent of such federal grants for old age assistance is allotted to the States for the administration of such assistance.

Grants under this title are to be made only to States which have a state plan for old age assistance which the Social Security Board finds conforms with standards set forth in the federal act. Section 2, Appendix, p. 2–3.

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to be paid and how they are to be measured. It also states what methods are to be utilized in preparing for, and in actually making, benefit payments under this Title. It does not endeavor to particularize any funds in the Treasury as the source of appropriations for benefit payments.

### A. DESCRIPTION OF BENEFITS

Title II provides for two general types of benefits, each to be given directly by the national government to individual persons: one, monthly pensions; the other, lump sum payments. Viewed in the light of the legislative history of the Social Security Act, as well as the anticipated operation of the statute, the monthly pensions or benefits are by far the more important. Furthermore, the monthly pensions will be paid more frequently and will involve a much larger distribution of money than the lump sum payments.[2]

Before describing either general type of benefit, we note that in the computation of each there enters the element of wages. But, as used in these computations, "wages" *never* include: (1) wages paid prior to January 1, 1937 [Sections 202, 203, 204]; (2) whatever in excess of $3,000 one employer pays to any one of his employees in one year [Section 210 (a)]; (3) wages paid after a man reaches 65 [Sections 202 and 204]; and (4) wages paid for agricultural labor, domestic service, serv-

[2] See Appendix, pp. 78–79, Tables 14, 15.

ice for the national or state governments, and service in a few other excluded employments [Section 210 (b)].

The principal type of benefit, as we have just indicated, is *a monthly pension* or benefit paid to a person after he has attained the age of 65 [Section 202]. This benefit is available only to one (a) who has worked for at least one day in each of at least 5 separate years since December 31, 1936 [Sections 202 (a) and 210 (c)], (b) who has earned at least $2,000 since December 31, 1936 [*ibid.*], and (c) who is not then receiving "wages with respect to regular employment" [Section 202 (d)]. The benefit is measured by a percentage of the "wages" that have been paid to the beneficiary in employment covered by the Title [Sections 202, 210]. The percentage is not uniform for all wages, but is on a descending or degressive scale [Section 202 (a)]. Moreover, there is a top limit of $85 to these monthly pensions. These limitations, taken together with the second limitation mentioned in the preceding paragraph, make it certain that the monthly pensions paid to aged persons will be conservative in amount.[3]

In addition to monthly pensions, provision is also made for "lump sum payments" which are of inci-

[3] See footnote 1, p. 80, *infra*. The House Committee on Ways and Means, 74th Cong., 1st Sess., in its report on the bill which became the Social Security Act, Report No. 615, p. 6, included a table to illustrate monthly Old Age Benefits under Title II. See Appendix, p. 64, Table 1, p. 78, Table 14.

dental significance. These payments are made in four situations:

(1) If through an administrative error or delay a person who is receiving a monthly pension dies before he receives the correct amount, the amount which should have been paid to him is paid in a lump sum to his estate [Section 203 (c)].

(2) If a person who has earned wages in each of at least five separate years since December 31, 1936, and who has earned in that period more than $2,000, dies *after* attaining the age of 65, but before he has received in monthly pensions an amount equal to 3½ percent of the "wages" paid to him between January 1, 1937, and the time he reaches 65, then there is paid in a lump sum to his estate the difference between said 3½ percent and the total amount paid to him during his life as monthly pensions [Section 203 (b)].

(3) If a person who has earned wages since December 31, 1936, dies *before* attaining the age of 65, then there is paid to his estate 3½ percent of the "wages" paid to him between January 1, 1937, and his death [Section 203 (a)].

(4) If a person has, since December 31, 1936, earned wages in employment covered by Title II, but has attained the age of 65 either without working for at least one day in each of 5 separate years since 1936, or without earning at least $2,000 between January 1, 1937, and the time he attains 65, then there is paid to him [or to his estate, Section 204 (b)], a lump sum equal to 3½ percent of

the "wages" paid to him between January 1, 1937, and the time he attained 65 [Section 204 (a)].

B. DESCRIPTION OF THE ADMINISTRATIVE METHODS UTILIZED IN PREPARING FOR, AND IN MAKING, OLD AGE BENEFIT PAYMENTS UNDER TITLE II

We now turn to the source of Old Age Benefits paid under Title II.

These benefits are not paid from the taxes collected under Title VIII, except in the sense that all governmental expenses are paid out of all governmental receipts. Collections under Title VIII are not earmarked for any special purpose. [Section 807 (a).]

These benefits are not directly and immediately (but only indirectly and ultimately) paid out of the taxes, loans, and miscellaneous receipts which constitute the general fund of the Treasury. The benefits are paid directly and immediately out of a special account known as the "Old-Age Reserve Account", created in the Treasury of the United States by Section 201.[4]

This Account receives its funds out of the general fund of the Treasury, and then only when Congress so directs by an appropriation act.[5] No ap-

[4] That all Old Age Benefits are to be paid from this Account is indicated by Section 201 (b) and (e) of the Social Security Act, as well as by the "First Deficiency Appropriation Act, Fiscal Year 1936", Act of June 22, 1936, c. 689, 49 Stat. 1597, 1635.

[5] See Testimony of Daniel W. Bell, Assistant to the Secretary of the Treasury, and Acting Director of the Budget, in

propriation was contained in the Social Security Act itself. The Congressional direction has been embodied, and will be embodied, in annual appropriation acts.[6] The annual appropriation acts, however, have followed and presumably will follow the authority conferred by Section 201 (a) of the Social Security Act, which is printed in the margin.[7] The effect of that section is merely to permit the House of Representatives to consider an appropriation to the Account without the risk of being subject to a point of order.[8]

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the Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives, 75th Cong., 1st Sess., on the Treasury Department Appropriation Bill for 1938, p. 71.

[6] For example, for the current fiscal year it received 265 million dollars as a result of the "First Deficiency Appropriation Act, Fiscal Year 1936", Act of June 22, 1936, c. 689, 49 Stat. 1597, 1635.

[7] SECTION 201. (a) There is hereby created an account in the Treasury of the United States to be known as the "Old-Age Reserve Account" hereinafter in this title called the "Account." There is hereby authorized to be appropriated to the Account for each fiscal year, beginning with the fiscal year ending June 30, 1937, an amount sufficient as an annual premium to provide for the payments required under this title, such amount to be determined on a reserve basis in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt, and upon an interest rate of 3 per centum per annum compounded annually. The Secretary of the Treasury shall submit annually to the Bureau of the Budget an estimate of the appropriations to be made to the Account.

[8] Rule XXI, Clause 2, Jefferson's Manual and Rules of the House of Representatives.

Although Section 201 (a) of the Act gives the authority for, it does not place a *dollar* limit upon, annual appropriations. Instead it takes as the maximum limit for annual appropriations the standard of accepted actuarial principles.

However, no single standard of accepted actuarial principles was written into the Act.[9] Thus the Secretary of the Treasury and the Director of the Budget are free to recommend, and Congress is free

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[9] Section 201 authorizes a premium "determined on a reserve basis in accordance with accepted actuarial principles." *At least* three different formulae would seem to meet that test. (1) It would be in accordance with accepted actuarial principles to take a uniform or level or straight-line premium, so that each year there would be appropriated the same amount. The Government Actuary, Mr. R. R. Reagh, informs us that it is likely that this method would involve a premium of something over 1.8 billion dollars annually in perpetuity. There are variations in this theory, as well as in the estimates, under this principle.

(2) Or it would be in accordance with accepted actuarial principles to appropriate each year to the Account the amount necessary to put the Account in funds to meet all benefits which had accrued. Since benefits accrue at a more rapid rate in the first years of a man's employment [and since this approach would require funds sufficient to cover theoretically possible claims under Sections 203 (a) and 204, as well as under Section 202], this actuarial principle would, it has been estimated, involve an initial premium for the calendar year 1937 of 5 billion dollars. A. J. Altmeyer, Chairman, Social Security Board, Hearings Before the Committee on Finance, Senate, 75th Cong., 1st Sess., on S. Con. Res. 4 (Feb. 22, 1937), p. 3. Indeed, if a margin of safety is to be allowed, the initial premium for the calendar year 1937 might well be 6 billion dollars.

(3) Or it would be in accordance with accepted actuarial principles to appropriate each year the amount necessary so

to consider without being subject to a point of order, a bill drafted upon the basis of any accepted actuarial principles.[10] In point of fact, during the last two fiscal years,[11] the executive officers have recommended and Congress has considered only a proposal which appropriates to the Account the amount necessary so that at any time the Account will have on hand the difference between the then value of future benefit payments under Title II and the then value of future taxes under Title VIII. But, in the future, the executive officers are free to recommend, and the Congress is free to entertain without risk of a point of order, an ap-

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that at any time the Reserve Account will have on hand the difference between the then value of future benefit payments under Title II and the then value of future taxes under Title VIII. It is this third principle which Congress has, up to date, followed. Sen. Rep. No. 628, 74th Cong., 1st Sess., p. 9, their table IV. See testimony of Mr. Reagh, the Government Actuary, in the Hearings Before the Subcommittee of the Committee on Appropriations, House of Representatives, 75th Cong., 1st Sess., on the Treasury Department Appropriation Bill for 1938, p. 72, line 8, *et seq.*, p. 73.

[10] Witte, E. E., *Old Age Security in the Social Security Act*, Journal of Political Economy, Vol. 45, No. 1, p. 20 (Feb. 1937), suggests that Congress would be acting within the authority conferred by Section 201 if it appropriated to the Account only enough to meet benefit withdrawals in the ensuing year, since it involves a sum smaller than the maximum authorized by Section 201.

[11] "First Deficiency Appropriation Act, Fiscal Year, 1936", Act of June 22, 1936, c. 689, 49 Stat. 1597, 1635. H. R. 4720, 75th Congress, 1st Sess. "A Bill making Appropriations for the Treasury and Post Office Departments for the Fiscal Year ending June 30, 1938, and for other purposes." See also footnote 5, pp. 9–10, *supra*.

propriation bill drafted on the basis of entirely different "accepted actuarial principles." This implies a great latitude, as footnote 9 on pages 11–12, *supra,* indicates. The amount may vary by as much as 4½ billion dollars in a single year.

We have thus far been considering the possible annual appropriations under Title II in relation to possible annual collections under Title VIII in order to show that there is no immediate budgetary equivalence between the two titles. Whether, in the long run, there will be a budgetary equivalence between appropriations under Title II and tax receipts under Title VIII depends on so many varying factors, economic, social and political, that no one can make more than a guess. Quite apart from other factors, for instance, a change in average wage levels no greater than we have seen in the last decade might produce tax receipts some hundreds of million dollars a year in excess of the necessary appropriations. This and other variable items render any schedule of estimated appropriations, even assuming adherence to a particular actuarial theory, subject to wide and increasing margins of probable error.

In short, an examination of Section 201, and of the Social Security Act as a whole, discloses: first, that the benefits to be paid under Title II will not flow directly from the taxes collected under Title VIII, and, second, that the amount to be appropriated pursuant to the authority conferred under Title II is not certain to bear any immediate budg-

etary equivalence[12] to the taxes collected under Title VIII.[13]

STATEMENT.

On November 17, 1936, the respondent, George P. Davis, a stockholder in The Edison Electric Illuminating Company of Boston, filed a bill in equity against his corporation in the United States District Court for the District of Massachusetts. He alleged that the taxes imposed by Section 801 (collection of which is provided for in Section 802) and Section 804 of the Social Security Act are unconstitutional; that he had so advised the defendant corporation; that the corporation nevertheless proposed to make the payments required by those Sections; and that further appeals to the

[12] We have shown that because of the varying standards of appropriation possible under Section 201, there is no certainty how much Congress will appropriate pursuant to the authority there conferred. Of course, another reason why there is no such certainty is that future Congresses may not exercise to the full the authority conferred by the Seventy-Fourth Congress. No Congress is bound to make any appropriation. Thus there is a further support for our statement that there is no necessary immediate budgetary equivalence between Title II and Title VIII.

[13] We believe that the foregoing epitome of Title II covers every point that is of legal significance in this case. But, for the possible convenience of the Court, we have summarized in Appendix D: (1) the method to be followed by the Secretary of the Treasury in investing the funds in the Account while awaiting the presentation of Old Age Benefit claims; and (2) the economic and political considerations which led Congress to establish a reserve for future disbursements under Title II instead of relying upon a pay-as-you-go policy.

defendant or its officers would be useless. And after an allegation of threat of irreparable injury, he prayed that the corporation be enjoined from making the aforesaid payments and that "Sections 802 and 804 be held to be not an Act of the Congress within its powers under the Constitution of the United States * * *" (R. 2–5).

The defendant corporation filed its answer on November 25, 1936 (R. 6–7).

Thereupon, the United States Commissioner of Internal Revenue and the United States Collector of Internal Revenue for the District of Massachusetts, the petitioners herein, sought, and on November 30, 1936, were permitted to intervene as defendants (R. 9–12). Once admitted, the intervening defendants filed two pleadings. The first was a motion to strike so much of the bill as related to the tax upon employees (Section 801) on the ground that the defendant employer, not being subject to tax under those provisions, does not have any standing to challenge the validity of that tax, and that the plaintiff stockholder whose rights are no greater than those of his corporation has even less standing to assail its validity (R. 12). The second was an answer which (1) restated the point raised in the motion to strike, (2) denied that the taxes imposed by Title VIII are unconstitutional, and (3) averred that the bill sets forth no facts which, if true, would entitle the plaintiff to the relief prayed for (R. 13–18).

The District Court concluded that the tax upon employees was not properly in issue and that the tax upon employers was constitutional. It thereupon denied the prayer for an injunction and dismissed the bill (R. 22). The Circuit Court of Appeals reversed, Judge Bingham dissenting (R. 26–31).[14]

## SUMMARY OF ARGUMENT

### I

Both the income tax upon employees and the excise tax upon employers imposed by Title VIII are challenged in this proceeding. However, since the employer is merely a withholding agent with respect to the employee tax, it is clear that neither the corporation nor respondent stockholder may ask for relief against that tax, predicated upon its asserted invalidity.

But even if both taxes are properly in issue in this case, they will be found to be a valid exercise of the taxing power under the Constitution, Article I, Section 8, Clause 1. The employee tax is a special income tax (*cf. United States* v. *Hudson*, No. 97, January 11, 1937), and the employer tax is an excise. Both comply with the requirement of uni-

[14] The opinion of the Circuit Court of Appeals incorporates by reference much of its discussion in *Davis* v. *Boston & Maine R. Co.*, decided on the same day. For the convenience of the Court the latter opinion has been reprinted in the Appendix at pp. 80–143.

formity, since the rule of liability is the same throughout the United States.

These taxes are true taxes, their purpose being simply to raise revenue. No compliance with any scheme of Federal regulation is involved. The proceeds are paid unrestricted into the Treasury as internal revenue collections, available for the general support of the Government. Although Congress may have anticipated that over a period of years the taxes would roughly offset the drain upon the Treasury to be occasioned by the wholly independent appropriations authorized under Title II, such rough budgetary equivalence is not sufficient to deprive Title VIII of its quality as a true taxing measure.

II

To the extent that the Circuit Court of Appeals declared the expenditure under Title II as not being for the general welfare, it erred in undertaking at all to pass upon the validity of Title II. The rule of *Frothingham* v. *Mellon,* 262 U. S. 447, which denies a taxpayer the standing to question the propriety of any expenditures from the Federal Treasury, is applicable here. That rule has been relaxed only where the tax avails are earmarked for a specific purpose. It has never been thought that a mere rough budgetary relationship—such as nearly always exists between new taxes and new expenditures—is sufficient to justify a departure from the general rule. And it is clear herein, not

only that the avails of these taxes are not earmarked, but also that there is no exact equivalence between the anticipated revenues and expenditures.

## III

The power of Congress to appropriate for the general welfare granted by Article I, Section 8, Clause 1 of the Constitution is a broad power not limited by or to the other enumerated powers of Congress. *United States* v. *Butler,* 297 U. S. 1. Whether any particular expenditure is for the general welfare is a matter completely within the determination of Congress. *United States* v. *Teller,* 107 U. S. 64, 68. In any event the decision of Congress is not reviewable by the courts if by any "reasonable possibility it is for the general welfare." *United States* v. *Butler,* 297 U. S. 1, 65.

The expenditures in the present case are clearly well within the limits of the power of Congress. The number of aged persons in this country is rapidly increasing; workers in urban industrialized civilization usually arrive at old age without adequate means for self-support, as is demonstrated not only by their earning powers during their working lifetime but by various studies which have been made of the extent of dependency of people over 65 years of age. Those who are able to call upon their children for support only aggravate the evil by depriving the younger members of the family of the resources which they

need. Voluntary industrial pension plans cover but a few. Private charity is inadequate to cope with the problem. Even state old age benefit laws present grave administrative and financial problems.

In the light of the above facts, we submit that there can be no doubt that the expenditures contemplated by Title II are for the general welfare of the United States.

Moreover, the form of the expenditures is soundly designed to promote general welfare. The statute excludes employed aged persons, thereby providing a simple and easily administered means test which is legally sufficient. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 230. The payments themselves are graduated both by wages and length of employment so as to provide an incentive to work, and at the same time roughly to relate benefits to past standards of living. The incidental lump sum payments under Sections 203 and 204 accord with the general purpose of the plan and also serve to simplify its administration. The exclusions from benefits are based upon sound administrative and economic reasons.

## IV

Since Title VIII and Title II severally constitute valid exercises of Congressional power, they cannot be invalid when considered jointly. Even if it be said that the avails of the taxes are ear-

marked, that fact does not deprive the taxes of their quality as true taxes. Nor are the taxes any the less true taxes if it be said that the proceeds are earmarked for the payment of benefits to a particular group. If the payment of benefits under Title II is an expenditure for the general welfare, then a levy for the purpose of providing funds for such expenditure must *ipso facto* be a tax within the meaning of the Constitution. The determination that the expenditures are for the general welfare is a determination that they are for the benefit of the taxpayers as well as for the benefit of the direct recipients of the expenditures. It has never been supposed that a tax ceases to be one for the general welfare because the immediate application of the proceeds is to one group of the population. *Clark* v. *Poor*, 274 U. S. 554; *Gillum* v. *Johnson*, 62 P. (2nd) 1037, 1044 (Calif. Sup. Ct.); *Beeland Wholesale Grocery Co.* v. *Kaufman*, decided by the Supreme Court of Alabama, March 17, 1937. "The Constitutional power to levy taxes does not depend upon the enjoyment by the taxpayer of any special benefit from the use of the proceeds raised by taxation." *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 268; *Carley & Hamilton* v. *Snook*, 281 U. S. 66; *Knights* v. *Jackson*, 260 U. S. 12, 15.

Titles II and VIII do not, when considered together, constitute a regulatory scheme. The Act does not require retirement from employment and has no significant tendency to induce it. The Act

cannot be said to constitute a plan for compulsory insurance within the accepted meaning of the term "insurance." Compare *Lynch* v. *United States,* 292 U. S. 571, 576–577. But whether or not the plan of the Act may properly be designated as old age insurance is immaterial, since it involves nothing more than a valid exercise of the taxing power and valid expenditures for the general welfare having no regulatory incidents. Compare *McCulloch* v. *Maryland,* 4 Wheat. 315. There is no enforced addition to wages and consequently the Act does not constitute a regulation of the wage relationship. The Tenth Amendment has no application, since Congress has only exercised its granted powers. *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 330. The tax and expenditures are not forbidden to the Federal Government merely because the States themselves might legitimately lay similar taxes and make similar expenditures. *Hoke* v. *United States,* 227 U. S. 308, 322.

For these reasons, the decisions in *United States* v. *Butler,* 297 U. S. 1, and *Railroad Retirement Board* v. *Alton R. R.,* 295 U. S. 330, have no application.

V

The taxes do not violate the Fifth Amendment. Not only are the various selections of employments for taxation well within the power of Congress

(*Sonzinsky* v. *United States,* No. 614, decided March 29, 1937), but they are of the type long sanctioned.

The provision limiting the amount of taxable wages to $3,000 is likewise valid. Congress has as full discretion in determining how far it will exercise the taxing power as it has in selecting the subjects for taxation. This provision will be found justified by precedent as well as by its reasonable tendency to avoid double taxation.

PRELIMINARY STATEMENT

This action was commenced in November 1936. The first tax became due March 1, 1937. Since it was apparent that at some time this tax would be subjected to a constitutional test the Government bent every effort toward an early determination in the hope of getting final decision before the due date of the tax. The case was submitted to the Circuit Court of Appeals after this Court denied certiorari in the companion case under the Social Security Act affecting taxes under Title IX (*Davis* v. *Boston & Maine Railroad,* certiorari denied Jan. 4, 1937). The routing through the Circuit Court of Appeals has thus necessarily delayed decision beyond the due date of the tax.

Each month of delay in a definite settlement of the constitutionality of Title VIII raises for the Government most serious budgetary, fiscal and administrative problems which are equally important

to the taxpayers. It is for this reason that the Government waives any technical objections whatever arising out of the stockholder's suit and desires to have a decision on the constitutionality of the statute and not merely on procedural points. The latter would leave the validity of the tax undecided and, under the shadow of the Circuit Court of Appeals' opinion, a multiplicity of litigations would be certain to result, as well as utter confusion in budgetary and fiscal matters, in tax collecting administration, and in the Social Security Board. The reasons which impelled us to waive objections to the form of the action, and impel us to waive them here, and to urge decision on the merits are as follows:

1. *Budgetary and Fiscal Reasons.*—Tax collections under this Title in the budget for the fiscal year 1938 are estimated at $253,300,000 for the fiscal year 1937, and at $621,800,000 for the fiscal year 1938. Congressional appropriations have been made and are being made in contemplation of such receipts. Brief experience indicates that the estimates are sound. Thus, there has been collected $19,444.25 during the month of January 1937, $13,908,989.67 during the month of February 1937, and $44,000,516.65 during the month of March 1937. These amounts represent both the employees' tax and the employers' tax under Title VIII of the Act.

If the constitutional question should be decided adversely to the government, Congress must not only find other sources of revenue to substitute therefor in appropriations already made and likely to be made but it must find revenue to provide for the refund of the collections under the Act, and the amount of interest thereon, which would be substantial and would increase with the delay in the decision.

Moreover, the decision as to the maturities of obligations to be issued by the Treasury in its future financing must of necessity be profoundly influenced by whether the taxes levied under Title VIII of the Social Security Act are valid. The aggregate receipts from Title VIII taxes during the next 5 fiscal years are roughly estimated at approximately 3 billions. During the succeeding 5 years these tax collections are estimated to be in excess of an additional 5 billions. It is contemplated that, since expenditures under the Social Security Act will not be equivalent to more than a small part of these collections, the great bulk of tax collections under Title VIII will be available for reductions in the aggregate amount of the public debt outstanding in the hands of the public. If the constitutionality of this tax is upheld it would obviously be desirable for the Treasury in its refunding and new borrowing operations to concentrate maturities very heavily during the period of large tax collections relative

to expenditures for old age benefits. On the other hand, if this Title is held to be unconstitutional, the Secretary of the Treasury will have to base his calculations on different factors.

2. *Administrative Reasons.*—Title VIII imposes the largest tax collecting task ever attempted by the United States Treasury. It requires 2,500,000 returns per month to be made by employers covering their own and their employees' taxes. This requires that the Bureau of Internal Revenue and the offices of collectors be geared to handle more than 2,500,000 returns per month with capacity for their receipt, listing for assessment and auditing. Machinery for ascertaining and requiring delinquent returns must be set in motion, involving the assertion of interest and penalties which may be legally due, and acting upon explanation of delinquency and adjusting offers in compromise where a tax has accrued and can not be paid. This machinery must be maintained if the tax is valid, and abandoned if the tax is not. It is of utmost importance that the government know which way it is to proceed.

In event that this tax is held unconstitutional, refunds will be in order to some 26 million employee taxpayers and approximately 2½ million employers. This would be the most stupendous refund program ever faced. It would require financing, verifications of claims, and computation of interest. The problem of so vast a number of

refunds to employees, most of them in small amounts, would have to be faced. The refunds probably could only be made to the employees, for many change places of employment and, in any event, the employer has been a mere agent for collection at the source.

3. *Effect of Period of Uncertainty.*—The tax under Title VIII now stands in a similar position to that which confronted the government in connection with the taxes imposed under the Agricultural Adjustment Act. The District Court for the District of Massachusetts upheld those taxes as it has upheld these. The Circuit Court of Appeals for the First Circuit reversed the lower court by a 2–1 decision as it has done here. Under that impetus an avalanche of suits, numbering approximately 2,000, seeking to restrain the collection of those taxes began to descend upon the Department of Justice and the various Collectors of Internal Revenue. The number of taxpayers under this Act is much greater than under the Agricultural Adjustment Act. It is not unlikely that, if a decision of this question be postponed until the next term, an unprecedented number of injunction suits will be commenced all over the United States.

It is safe to assume, furthermore, that many employers either with or without instituting action will cease filing returns or paying taxes, or both, unless there is an early decision by the Court, and

that number will increase with each month that passes before validity is determined. These delinquencies, in case the law is sustained, will create serious problems. In many cases employers may cease to deduct the tax from employees' wages.

If employers, financially able to institute and maintain legal proceedings in jurisdictions in which injunctions are granted, hinder the collection of taxes, they will thereby temporarily secure to themselves a competitive advantage over employers who cannot afford such proceedings or who are friendly to the purposes of the Act. Extensions of time will be sought, which the Commission has only limited authority to grant.

These disadvantages to the government are paralleled by equal disadvantages to the taxpayers. Some large concerns are installing or contemplating installation of additional accounting machinery to take care of the making of returns and keeping of the records necessary under the Act. Price levels for products have been or are being readjusted to include the tax. The economy of the country is adjusting itself to the distribution of this burden, and grave inequities will result if this process is allowed to continue in a period of uncertainty.

For these reasons the government feels compelled to waive any objection which it might have to the maintenance of this action. It is confronted by a condition and not a theory. This is not the

kind of statute in which evidence must be offered as to the operation of a particular industry or an effect of a statute as a basis for the Court's decision. This decision can be rendered just as intelligently upon the record in this case as upon the record in a refund case such as is now before the Court in No. 837, *Steward Machine Co.* v. *Davis.*

In the light of the above facts, the Government intervened in this proceeding and has, together with the corporate defendant, filed a petition for certiorari in an attempt to secure a decision on the merits of this case. We recognize, however, that there is a question with regard to the jurisdiction of this Court to pass upon the merits in this form of proceeding. Nevertheless, we believe that the Court can and should render a decision on the merits.

4. *Legal basis of jurisdiction.*—It may be objected that jurisdiction is lacking in this case for any one of the following three reasons: (1) there is no "case or controversy" within the meaning of Article III of the United States Constitution; (2) there are lacking the elements necessary for equity jurisdiction; and (3) R. S. Sec. 3224 operates to prevent this sort of suit. We believe that under the circumstances of this case none of these objections is tenable.

In answer to the objection that there is no "case or controversy" within the constitutional meaning of that phrase, we submit that, since the Collector is a defendant to the suit, and since both he and the

corporate defendant take a position adverse to that of the respondent, and since their adverse positions relate to a matter presently in controversy—to wit: the payment by the corporate defendant of taxes under Title VIII—there are present all the elements necessary to constitute a "case or controversy." *Cf. Aetna Life Insurance Co.* v. *Haworth*, No. 446, March 1, 1937.

In answer to the second objection, that is, that there are lacking the elements necessary to create a case within the equity jurisdiction of a court, we first note the exact nature of this objection. The objection, as *Norman* v. *Consolidated Gas Co.* (C. C. A. 2d, decided April 12, 1937) holds, is that if the shareholder waits until the corporation makes the tax payment and the corporation shows no disposition to seek a refund, then the shareholder has open to him a suit in equity to compel the corporation to seek from the Commissioner of Internal Revenue a refund in accordance with the provisions of the applicable statutes. In other words, it is said that there is lacking jurisdiction in equity at this moment, because there will be available in the future another adequate *equitable* remedy created since 1924.[14a] Although we agree with the Circuit Court of Appeals for the Second Cir-

[14a] The remedy of bringing suit to compel the corporation to seek a refund did not exist at the time this Court decided *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, and *Brushaber* v. *Union Pacific R. Co.*, 240 U. S. 1, since then no refund could be had if the corporations' original payment were voluntary.

cuit that the presence of this other equitable remedy is adequate and, like the presence of an adequate legal remedy, furnishes an appropriate ground for an equity court to refuse jurisdiction, it is a ground which, in our opinion, may be waived by all the parties[15]; and if waived in a lower court, cannot be raised in this Court.[16]

In answer to the third objection, that is, that

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[15] As this Court said in *Pusey & Jones Co.* v. *Hanssen*, 261 U. S. 491, 500:

"• • • The objection that the bill does not make a case properly cognizable in a court of equity does not go to its jurisdiction as a federal court. *Smith* v. *McKay*, 161 U. S. 355; *Blythe* v. *Hinckley*, 173 U. S. 501. The objection may, as pointed out in *Reynes* v. *Dumont*, 130 U. S. 354, 395, be taken by the court of its own motion. But, unlike lack of jurisdiction as a federal court, *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 382, lack of equity jurisdiction (if not objected to by a defendant) may be ignored by the court, in cases where the subject-matter of the suit is of a class of which a court of equity has jurisdiction. And where the defendant has expressly consented to action by the court or has failed to object seasonably, the objection will be treated as waived. *Brown* v. *Lake Superior Iron Co.*, 134 U. S. 530, 535, 536; *Southern Pacific R. R. Co.* v. *United States* (No. 1), 200 U. S. 341, 349."

There can, of course, be no question that in a case like the present, in which a stockholder sues to enjoin a corporation from committing what he regards as a diversion of corporate assets, "the subject matter of the suit is of a class of which a court of equity has jurisdiction." *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180; *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288.

[16] *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, at 554:

"The objection of adequate remedy at law was not raised below, nor is it now raised by appellees, if it could be entertained at all at this stage of the proceedings; and, so far as

R. S. Sec. 3224 prohibits a suit of this nature, our position is as follows: We agree that R. S. Sec. 3224 is intended to prevent equitable interference with the collection of Federal taxes by all devices, including the medium of a stockholder's suit in equity against a corporation to enjoin payment. However, we believe that this objection may be waived by an appropriate officer of the United States. See *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 554; *Hill* v. *Wallace*, 257 U. S. 615. We believe that such waiver is certainly within the power of the appropriate officers of the Government in a case like the present. Section 3224 was enacted to promote, not to discourage, the orderly administration and collection of Government revenues. Where, in the judgment of the appropriate officers, the litigation of an injunction suit is more important for the protection of the revenues than insistence upon adherence to the ordinary procedure of payment followed by a suit for refund, the officers should be permitted to waive the objections which Section 3224 authorizes them to raise.

## ARGUMENT

### I

### TITLE VIII IS A VALID EXERCISE OF THE POWER TO TAX CONFERRED ON CONGRESS BY ARTICLE I, SECTION 8, CLAUSE 1

Title VIII imposes two taxes. The first is an *excise* upon employers measured by a fixed per-

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it was within the power of the government to do so, the question of jurisdiction, for the purposes of the case, was explicitly waived on the argument. The relief sought was

centage of wages paid. Section 804. The second is an *income* tax upon employees measured by a fixed percentage of wages received [Section 801], and the duty of collecting this tax is placed upon the employer who is required to deduct it from wages paid [Section 802]. The respondent stockholder assails both taxes as invalid.

Respondent, however, is not entitled to any relief with respect to the employee tax. That tax is not imposed on his corporation, but is merely a withholding at the source, the employer being merely a collecting agent or stakeholder. The withholding provisions themselves are not challenged, nor could they be successfully attacked. *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 21; *Pierce Oil Corp.* v. *Hopkins,* 264 U. S. 137; *Bell's Gap R'd Co. v. Pennsylvania,* 134 U. S. 232, 239.[16a] The complaint is that the employee tax itself is invalid. But the employer, as stakeholder, has no *locus standi* to challenge this tax. *United States* v. *American Exchange Irving Trust Co.,* 43 F. (2d)

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in respect of voluntary action by the defendant company and not in respect of the assessment and collection themselves. Under these circumstances, we should not be justified in declining to proceed to judgment upon the merits."

[16a] The withholding provisions herein are even less open to challenge than those approved in the above cases. The employer is completely protected by Section 802 (a), which provides:

"Every employer required so to deduct the tax * * * is hereby indemnified against the claims and demands of any person for the amount of any such payment made by such employer."

829 (S. D. N. Y.);[17] *United States* v. *First Capital National Bank of Iowa City* (C. C. A. 8th), March 31, 1937. See also *Miami Valley Fruit Co.* v. *United States,* 45 F. (2d) 303 (C. C. A. 5th), certiorari denied, 283 U. S. 841; *United States* v. *Erb,* 8 F. Supp. 947 (S. D. N. Y.).

The corporation "can complain only of the infringement of its own constitutional immunity, not that of its employees." *Virginian Ry. Co.* v. *System Federation No. 40,* No. 324, March 29, 1937. "No employé is complaining of this act in this case." *Jeffrey Mfg. Co.* v. *Blagg,* 235 U. S. 571, 576. See also *Erie R. R. Co.* v. *Williams,* 233 U. S. 685, 697; *Rail Coal Co.* v. *Ohio Industrial Comm.,* 236 U. S. 338, 349; *Hawkins* v. *Bleakly,* 243 U. S. 210, 214. Accordingly, respondent stockholder, whose rights cannot be any greater than those of his corporation, may not ask for any relief against the tax on employees imposed by Section 801.

But, even if both taxes be examined, they will be found to be well within the ambit of Federal power. Title VIII is a valid exercise of the power "To lay and collect Taxes, Duties, Imposts and Excises, to

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[17] In the *American Exchange Irving Trust Co.* case, the Government levied upon a taxpayer's bank deposit. The bank, although admitting the deposit, denied the depositor's tax liability to the Government. The court rejected that defense (p. 831):

"* * * the present suit is against third parties who do not stand in the shoes of the taxpayer, and are therefore not permitted to set up defenses ordinarily available to taxpayers in actions brought against them to recover taxes."

pay the Debts and provide for the common Defence and general Welfare of the United States." Constitution, Art. I, Sec. 8, cl. 1. The authority so conferred "is exhaustive and embraces every conceivable power of taxation." *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 12.

The taxes imposed are true taxes. Both in form and substance they have all the indicia of and operate as a revenue measure. The statute originated in the House of Representatives,[18] and hearings were held by the House Committee on Ways and Means and the Senate Committee on Finance. The Bureau of Internal Revenue, under the direction of the Secretary of the Treasury, is charged with the duty of collection, and administrative provisions generally found in revenue measures relating to interest, penalties, and the like are also present here. Section 807.

The employee tax [Section 801] is an income tax with respect to services rendered, measured by wages received. Such a tax on income has always been considered within the power of Congress and not subject to the requirement of apportionment. *Springer* v. *United States*, 102 U. S. 586; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, 579. Any doubt that may possibly have existed on this question has been removed by the Sixteenth Amendment. Nor is it material that this

[18] The bill which was finally enacted was introduced in the House as H. R. 7260 on April 4, 1935, 74th Cong., 1st Sess.

is a "special income tax", imposed separately from and in addition to the general income tax law. *United States* v. *Hudson*, No. 97, decided January 11, 1937.

The employer tax [Section 804] is an excise, the incidence of which can be considered either on the receipt of services or on the exercise of the privilege of employing individuals. That such a tax is a true excise is clearly apparent from the discussion of authorities in Appendix C to the Government's brief in *Chas. C. Steward Machine Co.* v. *Davis*, No. 837, to which we respectfully refer the Court. But whether an excise or not, the levy on employers is in form, at least, undeniably a tax, and it does not matter what it is called in the statute. *Barwise* v. *Sheppard*, 299 U. S. 33, 36.

Neither of these taxes violates the test of "uniformity" in Article I, Section 8, Clause 1. That requirement is merely one of *geographical* uniformity. It is not, as respondent argues (Br. 40–46), a rule of *intrinsic equality*. The canon of uniformity is satisfied if "the rule of liability shall be the same in all parts of the United States." *Florida* v. *Mellon*, 273 U. S. 12, 17; *Knowlton* v. *Moore*, 178 U. S. 41, 83–108; *Poe* v. *Seaborn*, 282 U. S. 101, 117–118; *Bromley* v. *McCaughn*, 280 U. S. 124, 138.

The imposition of these taxes is a true exercise of the Federal taxing power. Their purpose is simply to raise revenue. Wholly unlike the exactions considered in the *Child Labor Tax Case*, 259 U. S. 20, and *Hill* v. *Wallace*, 259 U. S. 44, these taxes are not designed to and do not obtain com-

pliance with a scheme of Federal regulation. Since they could not be considered to be part of a regulatory scheme, these taxes are not comparable to the tax invalidated in *United States* v. *Butler*, 297 U. S. 1. Of the tax there involved, the Court said (p. 59):

> The rate is fixed with the purpose of bringing about crop-reduction and price-raising. It is to equal the difference between the "current average farm price" and "fair exchange value." It may be altered to such amount as will prevent accumulation of surplus stocks. If the Secretary finds the policy of the act will not be promoted by the levy of the tax for a given commodity, he may exempt it.

Thus, entirely apart from the fact that the proceeds were deemed to regulate agricultural production, the tax itself was regarded as a device calculated to control production and prices of agricultural commodities.

The taxes imposed by Title VIII can not have, nor were they intended to have, any regulatory effect. They simply raise revenue, which is paid unrestricted into the Treasury as internal revenue collections. Section 807. Congress anticipated that large sums would be collected.[19] And although

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[19] The combined yield of the two taxes was, at the time of the passage of the Act, expected to be $278,800,000 for the fiscal year 1937 (the taxes being operative during only one-half of that year, since they were to go into effect for the first time on Jan. 1, 1937); $560,200,000 for the fiscal year 1938; $714,600,000 for the fiscal year 1940; $1,028,800,-

the taxes for the first month were not due until March 1, 1937,[20] collections through March 31, 1937, have reached $57,928,950.57.

Nor is the quality of Title VIII as a taxing measure destroyed by the fact that Congress anticipated making large future expenditures out of the general treasury for the purposes enumerated in Title II, and that the taxes collected would operate to relieve the drain to be occasioned by such expenditures.

The constitutional validity of a tax is not affected by the fact that it was imposed because anticipated expenditures made it necessary to raise funds. It has long been recognized that "Taxation may run *pari passu* with expenditure". *Patton* v. *Brady*, 184 U. S. 608, 620. Cf. *Knights*

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000 for the fiscal year 1943; $1,359,400,000 for the fiscal year 1946; and $1,706,300,000 for the fiscal year 1949. See S. Rep. No. 628, 74th Cong., 1st Sess., p. 26; H. Rep. No. 615, 74th Cong. 1st Sess., p. 15. Since the passage of the Act, somewhat higher estimates have been made. Thus in the Annual Report of the Secretary of the Treasury for the fiscal year 1936, p. 44, it is estimated that for the fiscal year 1938 the taxes imposed by Title VIII will yield $622,000,000.

[20] The taxes are operative only with respect to wages paid after December 31, 1936. Sections 801, 804. Payments are due monthly with returns. Regulations 91, Articles 410, 401. And pursuant to Regulations 91, Article 409, returns must be filed on or before the last day of the first month following the period for which they are made. Thus, returns for January 1937 would be due on Feb. 28, 1937; but since Feb. 28, 1937, fell on Sunday, the returns and payments were not due, in accordance with Article 409, until March 1, 1937.

v. *Jackson,* 260 U. S. 12, 15; *Carley and Hamilton* v. *Snook,* 281 U. S. 66. Thus it is inconceivable that the Revenue Act of 1936 could fail as an exercise of the taxing power even to the extent that it raises more revenue than its predecessors, by reason of the fact that it was enacted to provide funds for the soldiers' bonus under the Adjusted Compensation Payment Act of 1936, c. 32, 49 Stat. 1099, and for expenditures under the Soil Conservation and Domestic Allotment Act, c. 104, 49 Stat. 1148. See H. Rep. No. 2475, 74th Cong., 2d Sess., pp. 1–3; S. Rep. No. 2156, 74th Cong., 2d Sess., pp. 1–3. Cf. *Knights* v. *Jackson, ubi supra.*

Indeed, not only is it generally recognized that there may be a proper relationship between anticipated expenditures and taxation, but some urge that they should always be considered together. Cf. Report of the Select Committee on the Budget of the House of Representatives, H. Rep. No. 14, 67th Cong., 1st Sess. And it has been the uniform practice in both the House and the Senate to consider the financial needs of the Government in the preparation of revenue bills.[21] The Budget and Accounting Act of

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[21] See House Hearings on H. R. 12395, 74th Cong., 2d Sess., p. 1, Revenue Act of 1936; Senate Hearings, p. 1, Revenue Act of 1936; House Hearings on H. R. 7835, 73d Cong., 2d Sess., p. 1, Revenue Act of 1934; House Hearings on H. R. 10236, 72d Cong., 1st Sess., p. 1, Revenue Act of 1932; Senate Hearings, p. 1, Revenue Act of 1932; House Hearings on H. R. 1, 70th Cong., 1st Sess., p. 1, Revenue Act of 1928; Senate Hearings, p. 269, Revenue Act of 1928;

June 20, 1921 (c. 18, 42 Stat. 20, 21), provides that if the estimated receipts are less than the estimated expenditures for the ensuing fiscal year, the President in the Budget shall make recommendations to Congress for new taxes, loans, or other appropriate action to meet the estimated deficiency.

The fact that the employee taxpayer will later be the recipient of benefits under Title II does not deprive either the employer tax or the employee tax of its quality as a true tax. "It would be difficult indeed to arrange public affairs in such fashion that no economic benefits would accrue to taxpayers as a result of the expenditures of tax collections." Haig, 14 Encyclopedia of Social Sciences 531, 536.[22] See also *id.*, p. 532.

Accordingly, Title VIII is a valid exercise of the taxing power; the taxes comply with the various applicable constitutional limitations; they are true

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House Hearings, on H. R. 1, 69th Cong., 1st Sess., p. 1, Revenue Act of 1926; Senate Hearings, p. 1, Revenue Act of 1926; House Hearings on H. R. 6715, 68th Cong., 1st Sess., p. 317, Revenue Act of 1924; Senate Hearings, pp. 1, 39, Revenue Act of 1924; House Hearings, Executive Session, on H. R. 8245, 67th Cong., 1st Sess., p. 384, Revenue Act of 1921; Senate Hearings, letter from the Secretary of the Treasury, p. 7, Revenue Act of 1921; House Hearings on H. R. 12863, 65th Cong., 3d Sess., pp. 9, 13, Revenue Act of 1918.

[22] Haig also calls attention to "the enormous development of governmental functions which has come about, resulting in traceable benefits and forming the foundation for the modern demand that specially benefited individuals and classes should assume some degree of responsibility for the costs involved." *Id.*, p. 539.

taxes, having no regulatory purpose or effect; they were designed to and actually do raise revenue in substantial amounts which is paid unrestricted into the Treasury of the United States.

## II

### THE APPROPRIATIONS AUTHORIZED BY TITLE II MAY NOT BE CHALLENGED BY A TAXPAYER UNDER TITLE VIII

The Circuit Court of Appeals held that a tax for the old age benefits provided for in Title II "cannot be said to be imposed for the general welfare of the United States and the taxes under Title VIII would fail for this reason" (R. 28). It is our position that a taxpayer under Title VIII has no standing to challenge the constitutionality of Title II, and that the court below erred in undertaking to pass upon it. The taxes are paid into the Treasury completely unrestricted, and are subject to call for the general support of the Government. We do not deny that the taxes imposed by Title VIII were intended roughly to relieve the drain on the Treasury to be occasioned in the future by Title II. But we do say that such a rough budgetary correspondence—a correspondence that may and probably will fail to achieve even approximate mathematical equivalence (see pp. 9–14, *supra*)—is not sufficient to entitle a taxpayer to challenge these proposed expenditures.

A taxpayer of the United States may not attack the expenditure of funds from the Federal Treasury. *Frothingham* v. *Mellon,* 262 U. S. 447;

*Wheless* v. *Mellon*, 10 F. (2d) 893 (App. D. C.), certiorari denied, 269 U. S. 560. While that rule has been relaxed where the avails of the tax are earmarked for a specific purpose (*United States* v. *Butler*, 297 U. S. 1), no such circumstances are present here to justify a departure from the general rule.

The operation of the taxes under Title VIII is in no way conditioned upon the expenditures provided for in Title II. The rates of tax are fixed, and the proceeds are commingled in the general Treasury. And no money which has been covered into the Treasury can be paid out except pursuant to an appropriation (Const., Art. I, Sec. 9, cl. 7). But Title II does not contain any appropriation, it merely *authorizes* appropriations. Future acts of Congress are necessary to make the appropriations, and when they are made, they will derive their vitality from such acts of Congress rather than from Title II. Thus, the first appropriation contemplated by Title II was made by the Act of June 22, 1936, c. 689, 49 Stat. 1597, 1635. In making subsequent appropriations, future Congresses may or may not elect to follow the provisions of Title II. See Witte, *Old Age Security in the Social Security Act*, 45 Journal of Political Economy 1, 15, 17, 19, 20. A future Congress may not even make any appropriation in a given year. Yet the taxes imposed by Title VIII continue.

But even if future Congresses should stay within the provisions of Title II, the expenditures ac-

tually made for the specified benefits would have no mathematical equivalence to the taxes collected. Thus, it is expected that $253,000,000 will be realized under Title VIII for the fiscal year 1937. See Hearing before Subcommittee of the House Committee on Appropriations, 75th Cong., 1st Sess., Treasury Department Appropriation Bill for 1938, p. 69. Yet benefit payments are not expected to exceed $1,900,000. See H. Rep. No. 615, 74th Cong., 1st Sess., p. 6; S. Rep. No. 628, 74th Cong., 1st Sess., p. 9. It is only between 1965 and 1970, according to present calculations, that benefit payments will be even roughly equivalent to the taxes collected, and the benefit payments thereafter are expected to exceed the tax receipts. See H. Rep. No. 615, and S. Rep. No. 628, *ubi supra*.

Moreover, even if there be added to the benefit payments in any given year the current addition to the reserve, there would still be a wide discrepancy between that amount and the tax receipts under Title VIII. The benefit payments and addition to the reserve in any specified year are predicated upon many factors, some of which are entirely independent of contemporary tax receipts. The taxes would merely be a fixed percentage of wages paid during that year in the employments subject to the Act, while the appropriation would be dependent upon two major variables. The amount needed for current benefit payments would depend upon the number of eligible recipients then alive as well as

upon the amount and distribution of their past wages. The second major variable, the contribution to the reserve, is governed by Section 201, which requires that the reserve be maintained "in accordance with accepted actuarial principles, and based upon such tables of mortality as the Secretary of the Treasury shall from time to time adopt * * *." Thus there is room for variation here not only in possible revision of the mortality tables, but also in the fact that there are at least several very different methods of maintaining this reserve, all "in accordance with accepted actuarial principles."[23] The question is merely one of how the burden of anticipated expenditures should be distributed among succeeding annual Federal budgets in accordance with prudent business management. The "straight line" method and the method employing the present value of accrued liabilities are but two examples of widely divergent systems that could be resorted to. Yet the annual addition to the reserve under the first of these methods would be quite different from that called for under the second.[24]

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[23] See footnote 9, pp. 11–12, *supra*.

[24] Under a straight line method, involving an appropriation substantially equal every year in perpetuity ~~for each employee,~~ the annual appropriation would be ~~at the outset~~ in the neighborhood of $1,800,000,000. See footnote 9, pp. 11–12, *supra*. On the other hand, a very different result would be reached if there should be added to the reserve the then value of liabilities accrued during the year.

Thus, it is clear that not only are the Title VIII taxes covered unrestricted into the general treasury but also that there is no equivalence between the amount of those taxes and the expenditures authorized under Title II. It is not suggested, however, that Congress did not have Title II in mind when it imposed the taxes in Title VIII. Title II contemplated large future expenditures, and it is one of the characteristics of prudent government to provide new taxes roughly to offset the drain on the treasury to be occasioned by new expenditures. Title VIII does no more than that. It has an independent vigor, and is not conditioned in any way upon Title II for its operation.[25] The proceeds pass unrestricted into the general treasury and are not equated in any way to the authorized expendi-

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Since the monthly benefits under Title II are computed at the rate of ½ of 1 percent upon the first $3,000 of wages earned after December 31, 1936, at the rate of $\frac{1}{12}$ of 1 percent on the next $42,000, and $\frac{1}{24}$ of 1 percent on the rest, it is clear that there will be a considerably more rapid rate of accrual in the earlier years of operation of the statute. Thus, if this method were followed, it is expected that $5,000,000,000 or $6,000,000,000 a year would have to be added to the reserve during the course of the next few years, and that thereafter there would be a sharp decline in the amount called for.

[25] Contrast in this respect the processing taxes invalidated in *United States* v. *Butler*, 297 U. S. 1, 59, which were conditioned not only in operation, but also in amount by the spending program. Compare also *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 340–344, where the exactions, although not claimed to be taxes, were nevertheless paid into a special fund to meet the expenditures therefrom.

tures. The taxes were intended at most to relieve in a rough manner the anticipated drain upon the treasury. This budgetary correspondence exists nearly every time new taxes are imposed. See pp. 37–39, *supra*. Yet it has never been suggested that the rule of *Frothingham* v. *Mellon*, *supra*, should be relaxed merely because the taxes tend to balance the budget. To permit the rule to be so whittled away would go far to sanction a challenge to the Soldiers' Bonus by a taxpayer under the Revenue Act of 1936 because more taxes are demanded from him than under prior revenue laws. See p. 38, *supra*.

Accordingly, it is respectfully submitted that the fundamental rule of *Frothingham* v. *Mellon* should not be devitalized as was done in the court below, and that the propriety of the expenditures under Title II should not be considered by this Court.

## III

## The Expenditures Authorized by Title II Are Within the Authority of Congress Under Article I, Section 8, Clause 1

### A. THE SCOPE AND CONTENT OF THE GENERAL WELFARE CLAUSE

By Article I, Section 8, clause 1 of the Constitution Congress is empowered—

> to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide

> for the common Defence and general Welfare of the United States; * * *.

This clause confers an express power to tax in order to provide for the general welfare. It also confers the implied, correlative power to spend the avails of the taxes for the same purpose. Of course, if Congress may tax for this purpose, it must have the power to appropriate the money which is raised to the same object. *United States* v. *Butler,* 297 U. S. 1, 65–67; *United States* v. *Realty Co.,* 163 U. S. 427, 440; *Legal Tender Cases,* 110 U. S. 421, 440.

This power of appropriation is not limited by or to the other enumerated powers. Rather, its limits are those implicit in the term "general welfare." It includes, in other words, any expenditure that will, by any "reasonable possibility", conduce to the *general* welfare of the United States. *United States* v. *Butler, supra;* Story, *Commentaries on the Constitution of the United States* (5th ed.), Vol. I, Chapter XIV; Hamilton, *Report on Manufactures,* in *Works* (Ham. ed.), Vol. III, pp. 192, 250. Though it is true that eminent men, upon whom respondent relies (Br. 57–58),[28] have at various times in our history asserted a contrary

[28] Veto messages of President Buchanan on bill to endow colleges in each State (February 24, 1859), Richardson, *Messages and Papers of the Presidents,* Vol. V, p. 547; of President Cleveland on an act to aid Texas drought sufferers (February 16, 1887), *id.*, Vol. VIII, p. 557. The veto of President Jackson in *id.*, Vol. II, pp. 483, 492, 589 is not, upon a fair reading, contrary to our view.

view, it must now be regarded as settled, not only by the *Butler* case, but also by the long continued practice of Congress in expenditures of public funds,[27] that Story and Hamilton were correct.

The determination whether a particular expenditure is for the general welfare is one of governmental policy—of political economy—in the largest sense of the term. In the very nature of this power, that question must be left to the determination of Congress. *United States* v. *Teller,* 107 U. S. 64, 68; *Frisbie* v. *United States,* 157 U. S. 160, 166; *United States* v. *Cook,* 257 U. S. 523, 527; President Monroe in Richardson, *Messages and Papers of the Presidents,* Vol. II, p. 166. If it were otherwise the Court would repeatedly be called upon to decide matters of policy and expediency—matters which it has often stated that it has no power to review. *Wilson* v. *New,* 243 U. S. 332; *German Ins. Co.* v. *Lewis,* 233 U. S. 389; *McCray* v. *United States,* 195 U. S. 27; *Champion* v. *Ames,* 188 U. S. 321; *Williams* v. *Heard,* 140 U. S. 529, 537; *Nebbia* v. *New York,* 291 U. S. 502, 537. In any event, this Court has stated that only when "by no reasonable possibility" can the challenged expenditure be said

[27] See brief for the United States in *United States* v. *Butler,* No. 401, October Term, 1935 (297 U. S. 1), at pp. 153–170; brief for the respondent Administrator in No. 32, *Duke Power Co.* v. *Greenwood County,* pp. 164–165; brief for respondent Collector in No. 837, *Steward Machine Co.* v. *Davis,* pp. 131–136. The legal effect of a long-continued practice is recognized in *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304, 328–329.

to fall within the "wide range of discretion" possessed by Congress will the statute be adjudged to be invalid. *United States* v. *Butler*, 297 U. S. 1, 65–67; *United States* v. *Realty Co.*, 163 U. S. 427, 444; *Head Money Cases*, 112 U. S. 580, 595.

In the present case there has been a long and intensive investigation of the problem to which this statute is a response. The President's Committee on Economic Security, over a period of six months, made a thorough preliminary investigation and report.[28] That Committee was aided not only by a Technical Board, composed of government officers, and by a research staff of government employees, but also by an Advisory Council, consisting of leading citizens in various fields, and seven advisory groups. Following this report, extensive hearings were held before the House Committee on Ways and Means and before the Senate Committee on Finance. The hearings, before the House Committee, extending from January 21 to February 12, 1935, resulted in 1,141 pages of testimony.[29] The Senate Committee hearing, extending from January 22 to February 20, 1935, produced 1,354 pages of testimony.[30]

In contrast to this, the record in the present case contains no evidence to overcome that presented to the Committees of Congress. Under these cir-

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[28] *Report to the President of the Committee on Economic Security* (1935).

[29] Hearings before the House Committee on Ways and Means on H. R. 4120, 74th Cong., 1st Session.

[30] Hearings before the Senate Committee on Finance on S. 1130, 74th Cong., 1st Session.

cumstances, we submit that the legislative determination by Congress that the expenditures authorized by the present Act were for the general welfare has not been overcome. In the analogous situation in cases arising under the due process clause of the Fourteenth Amendment, the presumption of constitutionality has been held to prevail in the absence of some factual foundation of record for overthrowing the statute. *O'Gorman & Young* v. *Hartford Insurance Co.*, 282 U. S. 251, 258; *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580; *West Coast Hotel Co.* v. *Parrish*, No. 293, March 29, 1937. See also *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194, 209 (equal protection clause); *Alaska Packers Association* v. *Industrial Accident Commission*, 294 U. S. 532, 547 (full faith and credit clause).

In any event, however, we submit (1) that the Old Age Benefit payments contemplated by Title II will, at least by some reasonable possibility, conduce to the general welfare of the United States, and (2) that the form of the benefit payments for that purpose is wholly proper.

### B. THE OLD AGE BENEFIT PAYMENTS CONTEMPLATED BY TITLE II WILL PROMOTE THE GENERAL WELFARE OF THE UNITED STATES

#### 1. THE PROBLEM OF OLD-AGE DEPENDENCY *

There are today nearly 8,000,000 persons aged 65 or over in the United States, constituting ap-

* Analytical and research assistance has been furnished by Robert P. Bingham, Peter Seitz, Elliott H. Moyer, and Morton Stavisky.

proximately 6 percent of the total population.[31] In 1870 that age group contained 1,153,649 persons—3 percent of the population.[32] In other words, in less than 70 years, while the population has slightly more than tripled, the aged have increased over seven-fold, and their ratio to the total population is approximately twice as great.[33]

Even more significant is the prediction of population experts as to the increase in the number of aged persons in the future. Estimates vary, depending on estimates of future birth rates, mortality rates, and immigration, but a median estimate [34] indicates that by 1980, although the total population will have increased to only 158,000,000, those aged 65 or more will have increased to 22,-

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[31] Appendix, p. 64, Table 2. The Bureau of the Census estimates that on January 1, 1938, the number of persons aged 65 or over will be 7,988,000. Hearings before the Subcommittee of the House Committee on Appropriations on Independent Offices Appropriation Bill, 75th Cong., 1st Sess., p. 499.

[32] Appendix, p. 64, Table 2.

[33] This tendency of the population to include a relatively larger number of persons aged 65 or over is shown also for the middle aged. Since 1850 the age group 30–44 has increased from 16.6 percent of the population to 21.5 percent, and the age group 45–64 has increased from 9.9 percent to 17.5 percent. Appendix, p. 65, Table 3.

[34] Whelpton, P. K., *An Empirical Method of Calculating Future Population*, Jour. American Statistical Assn., Vol. 31, No. 195 (Sept. 1936), pp. 457, 473.

000,000—14 percent of the total population.[35] In other words, in 1980 there will be nearly *three times as many aged persons as there were in 1930.* Moreover, the increase will not be confined to those over 65; those in the age groups of 40–65 also show large absolute and relative increases[36]—a fact of great importance in view of the declining span of working life described below.[37]

The fact that the United States is at present faced with a much greater number of aged persons, proportionately as well as absolutely, than existed in 1870, and that it must expect an increasingly greater number until at least 1980, might well in itself justify action now and preparation for the future. But we need not rely exclusively on the factor of increasing numbers, as there are other considerations which have combined to increase the inability of aged persons to care for themselves—considerations which will continue to be present and which will far outweigh in importance even the rapid numerical increases.

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[35] The Committee on Economic Security estimated that in 1980 there would be 17,001,000 persons, or 11.3 percent of the population who would be 65 or over. Report of the Committee on Economic Security, p. 68. See also H. Rep. No. 615, 74th Cong., 1st Sess., p. 4. Louis I. Dublin, Statistician of the Metropolitan Life Insurance Company, estimates that persons 65 or over in 1980 will constitute 16.9 percent of all persons. Dublin, L. I., and Lotka, A. J., *Length of Life* (1936), p. 265.

[36] See Appendix, p. 65, Table 4.

[37] See pp. 56–58, *infra.*

The United States, during the past decade, has begun to experience the consequences of urbanization and industrialization.[38] During the early history of the country, families for the most part lived on farms or in small villages. Age meant continuation of occupation at a slower pace. Old men could still do chores around the farm; old women helped with various household activities. Cash was relatively unimportant, for people produced most of the goods which they consumed.

The urban industrial worker lives under entirely different conditions.[39] Cash with which to buy food, lodging, and other necessities is an essential requirement of urban life. However, the urban worker, reaching old age—and even middle age—all too frequently finds himself without cash reserves or property which may be converted into cash. This condition is explained by reference to two features of our industrial life: (a) the difficulty experienced by urban workers in laying aside a sufficient reserve out of their wages for old age

[38] In 1790, 3 percent of the population lived in cities of 8,000 or more inhabitants. In 1930 the number had increased to almost 50 percent. Thomas, Warren S., and Whelpton, P. K., *Population Trends in the United States* (1933), pp. 18–19. See also Goodrich, Carter, and others, *Migration and Economic Opportunity* (1936), p. 678; *Economic Insecurity in Old Age* (Social Security Board, 1937), pp. 21–22.

[39] For a discussion of the inability of the industrial worker to bridge the gaps in his employment see our brief in *Steward Machine Co.* v. *Davis*, No. 837 at pp. 13–20. See also, generally, *Economic Insecurity in Old Age*, *supra*.

while maintaining themselves and their families at a level compatible with American minimum standards of health and decency and (b) the periodic wiping out of their accumulated savings by various emergencies occurring during their working years, and the ravages of economic depressions.[40]

[40] Some appreciation of the extremity of the worker's position may be gained from the following brief digest of the contributing factors. The average per capita full-time income of employees in mining, quarrying, manufacturing, construction and transportation in the prosperous year 1929 was but $1,404 and in the depression year 1933, $929. Martin, Robert F., *National Income and Its Elements*, National Industrial Conference Board, Inc. (1936), page 29. 53 percent of non-farm families in 1929 had incomes of less than $2,000, and 75 percent had incomes of less than $3,000. Brookings Institution, *America's Capacity to Consume* (1934), p. 261. In 1929 it was estimated that an income of $2,000 was essential to maintain a family of five in Chicago to meet a minimum budget compatible with American standards of decency and health. The *Chicago Standard Budget for Dependent Families*, Chicago Council of Social Agencies (1929), p. 49.

Adjusted to the cost of living index of the Bureau of Labor Statistics, this amount in 1935 was $1,602. The cost of living studies conducted in numerous urban centers by the Bureau of Labor Statistics indicates that one-third to one-half of low-income families not only fail to save in a given year but suffer a decrease in assets or an increase in liabilities. The average New York and Detroit family in the period 1934–1936 was forced into debt annually to the extent of $96 and $13, respectively. In Boston, the average family was able to save only $2 a year. *Economic Insecurity in Old Age*, pp. 56, 86.

Thus it is evident that the urban wage earner, who is usually the sole or principal source of family income, after making necessary expenditures for the family budget, will,

Low as is the average wage paid to *all* persons in industry, the average wage paid to industrial

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in all probability, have insufficient reserves to meet even immediate and impending emergencies.

The major hazard facing the wage earner is the loss of income resulting from unemployment. The average annual loss during the last 40 years in all non-agricultural industry has been about 8 percent. Douglas, Paul H., and Director, Aaron, *The Problem of Unemployment* (1931), p. 32. This means in absolute figures an average annual loss in wages due to unemployment of approximately 4.2 billion dollars and average annual unemployment of about 2,780,000 persons. *Economic Insecurity in Old Age*, p. 95. In the period from 1929 to 1936, according to conservative and authoritative estimates, the number of unemployed reached as high an average as 10,000,000, and at one point of time during this period the total number of unemployed approximated 16,000,000 persons. See brief in *Steward Machine Co.* v. *Davis*, No. 837, p. 11, and references therein set forth. In addition, in both normal and depression times, part time or under employment and absenteeism due to disability, family misfortune, temporary layoffs, bad weather, etc., cut deeply into and substantially reduced the income of workers. It has been estimated that these alone count for an 8 percent loss in wages. Douglas, Paul H., *Real Wages in the United States 1890–1926* (1930), p. 478. See also *Economic Insecurity in Old Age*, p. 99.

Even when industrial workers are enabled to accumulate savings out of their incomes for their old age, they are frequently drained away by expenditures for recurring emergencies which they must meet in the course of their industrial lives, such as the following:

(a) Sickness and Accidents: The average annual cost of medical care per family in families with annual incomes from $1,200 to $2,500 is $86. In families with incomes of less than $1,200 the cost is $49 per family. Falk, I. S., *Security Against Sickness*, p. 15. The aggregate annual loss of earnings and cost of medical care due to illness has been found to be 2.4 billion dollars in families with incomes of less than $2,500. *Ibid.*, p. 13.

workers after early middle age is even lower. Inability of the middle aged to adjust themselves to

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(b) Death: The average cost of funeral and burial in 1927 was $363. Gebhart, John C., *Funeral Costs, Miscellaneous Contributions on the Costs of Medical Care*, No. 3 (1930), p. 5; *Economic Insecurity in Old Age*, p. 107. To meet this cost low income families carry industrial or "burial" insurance. It has been estimated that 5 to 6 percent or more of family income in the lower income brackets is spent for premiums for such insurance in normal times; from 10 to 12 percent is spent for such insurance by such families during periods of depression. Taylor, Maurice, *Social Cost of Industrial Insurance*, p. 251; *Economic Insecurity of Old Age*, pp. 65, 66. Despite this large expenditure the average amount of such insurance carried is only $309. Thus average funeral expenses actually exceed the amount of insurance available by 17.7 percent. Gebhart, John C., *Funeral Costs 1930*, pp. 4, 5; Also see Gebhart, John C., *The Reasons for Present Day Funeral Costs*, 1928, and *Economic Insecurity in Old Age*, p. 107.

(c) Savings Account Withdrawals and Bank Failures: The principal type of savings of workers in low income groups consists of deposits in savings accounts. During the last depression, in the four years ending June 30, 1934, 13,000,000 depositors closed their savings accounts and over 17 billion dollars were withdrawn during that period. In addition to these voluntary withdrawals, between 1931 and 1935, 13,648 national, state, and non-member banks with $7,816,830,000 deposits were suspended. How many wage earners lost their life-time savings in such banks is not known, but it is reasonable to suppose that they bore their share of such losses. *Economic Insecurity in Old Age*, pp. 141, 142.

(d) Insurance losses: Industrial or "burial insurance" which has a very low cash surrender value is the only type of insurance generally available for low-income urban workers. However, during depression years, due to unemployment, workers cannot continue their weekly or monthly payments on such insurance. In the four years from 1932–5, inclusive, nearly 20 million industrial policies were

changing labor demands or new jobs, competition of younger workers in an overabundant labor market, and arbitrary dismissal policies of many employers [41] are increasing the premature superannuation and permanent unemployment in middle life.[42] Particularly in times when retrenchment is necessary, the older employee will suffer a loss of wages in all except the most highly skilled occu-

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surrendered. The face value of such policies was over 4 billions of dollars in the aggregate, and even greater loss was sustained in the lapsing of 58 million policies with a face value of 13 billions of dollars. It is estimated that policyholders lost on the average of 40 million dollars a year for each of the five years from 1928 through 1932 on lapsed policies. *Economic Insecurity in Old Age*, pp. 119–122.

(e) Loss of homes and investments: Those workers who were able to save sufficiently to own their own homes suffered severe losses in the depression. About one million families lost their homes through foreclosures from 1930–1936, inclusive. It is estimated that over 2 billion dollars were lost in home equities during that period. *Economic Insecurity in Old Age*, p. 128. In addition, workers who were successful in saving suffered losses in the deflation of the values of securities and other types of investment. *Economic Insecurity in Old Age*, pp. 132–138.

[41] *Middle-Aged and Older Workers* (Calif. Dept. of Industrial Relations), Special Bulletin No. 1, p. 35, No. 2, pp. 34, 98; Barkin, Solomon, *The Older Worker in Industry*, (N. Y. Legis. Doc. No. 66, 1933), p. 159.

[42] See, *e. g.*, *The Older Worker in Maryland* (Commissioner of Labor and Statistics, 1930), p. 39, which shows that the ages of highest frequency in manufacturing establishments in Baltimore, and in other parts of the State, were 18 and 22, respectively, and that the median ages were 29 and 30, respectively. See also Appendix, pp. 77–78, Table 13.

pations."[43] Moreover, contrary to the rule in professional and skilled occupations, the peak of an average industrial worker's earning power is reached in early middle life, and even those old employees who succeed in retaining their positions will find their wages rapidly becoming less."[44]

The hazards of the *employed* older worker, however, are negligible compared to those encountered by the unemployed man or woman over 40 who seeks reemployment. The inability of older men to meet production standards, the higher group insurance rates when older employees are hired, and the burden of taking care of employees already grown old with the company have combined to cause most industries to adopt employment policies that militate strongly against the middle-aged unemployed.[45] Sample studies reveal that such policies are not a consequence of the depression, for in 1929, in New York, 28 percent of the manufacturing plants had a hiring age limit, commonly 45.[46]

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[43] Barkin, Solomon, *supra*, p. 159.

[44] Appendix, p. 66, Table 5,

[45] *Hiring and Separation Methods in American Factories*, Monthly Labor Review, Vol. 35, No. 5, pp. 1005–1017, November 1932, p. 1009. Boyd, Charles J., *Some of the Problems of the Middle-Aged Man—His Chances of Securing Employment* (U. S. Dept. of Labor, Bureau of Labor Statistics), Bulletin No. 478, 1928, pp. 19–21; *Hearings Before the House Committee on Ways and Means*, *supra*, pp. 199, 220, 1005; *Hearings Before the Senate Committee on Finance*, *supra*, pp. 177–178, 760–761.

[46] *The Older Worker in Industry* (Annual Meeting of Nat. Ass'n. of Manufacturers, 1929), p. 12.

In 1930, out of 224 American factories, 71, or almost one-third, had fixed maximum hiring age limits; in 4 plants the limit was under 40, in 45 it was under 46. In the other 153 plants there were no fixed limits, but in practice few were hired who were over 50 years of age."[47] Seasonal, and *a fortiori* cyclical, depressions accentuate the problem. During the recent depression, for example, when over one-third of all gainfully employable workers were unemployed,[48] workers over 40 were laid off to an even greater extent than young workers. And those over 40 will in most cases never again be able to find employment."[49]

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[47] *Hiring and Separation Methods in American Industry*, Monthly Labor Review, Vol. 35, No. 5, pp. 1005–1017, Nov. 1932, p. 1009.

[48] In 1930 there were 48.9 million gainfully employable persons in the United States. *Fifteenth Census, 1930*, Vol. V, p. 114. Estimates of the maximum number of persons unemployed during the depression range from 14 to 17 millions. See Appendix to brief for the respondent Collector in No. 837, *Steward Machine Co.* v. *Davis*, pp. 77–79, Table 20.

[49] "Industry is not keen about hiring older applicants. In fact, it can be said, on the basis of the experience of some 2,300 manufacturing establishments in the latter half of 1930, that the older persons will hardly succeed in obtaining employment. The age when hiring handicap begins for males is 35 years and females 30 years. The chances of an unemployed person of 40 years and over obtaining employment are only about 19 percent as good as those of a person under 20 years of age. In comparison with the average person, the older male suffers a 59 percent handicap and the older female a 65 percent hiring handicap. These barriers grow more formidable with advancing age so that in

One would be justified in concluding, without more, that a large proportion of all workers, upon reaching the age of 65, would be dependent upon others for support. Such studies as have been directed to this question completely bear out the conclusion.[50]

Three extensive state surveys, all of which antedate the depression, may be cited. In Pennsylvania, in 1919, a study of 16,281 persons and interviews with more than 3,500 persons 65 years of age and over showed two-fifths with no income but wages and one-fourth supported by children; 1.5 percent had savings and 11.8 percent had property.[51] In Massachusetts, in 1924, two-thirds of those above 65 had, alone or with a spouse, less than $5,000 of property, and one-fourth had none. Two-thirds of those with less than $5,000 were dependent in whole or in part on others for support.

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the case of males, the handicap for those 50–54 years is 66 percent and for those 60–64, 83 percent, in comparison with the average person's ability to obtain employment. In the above survey, it was found that only 15 percent of the newly hired were 40 years or over, and only 8.5 percent 45 years and over." Barkin, Solomon, *The Middle-Aged Worker—His Chances in Industry*, in *Social Security in the United States* (1933), p. 20–28.

[50] The Senate Committee estimated that over half of the people in the United States over 65 years of age are dependent upon others for support. Sen. Rep. No. 628, *supra*, p. 4. A similar estimate was made by the Committee on Economic Security. H. Doc. No. 81, 74th Cong., 1st Sess., p. 20.

[51] *Report of Pennsylvania Commission on Old-Age Pensions* (1919), p. 108.

Nothing was ascertained of the income of those with property of $5,000 or more.[52] In New York, in 1930, total dependency, including aid from organized charity, restraint in institutions and support by friends and relatives amounted to 58 percent for those 65 and over and 62 percent for those 70 and over.[53] As we have said, these are all pre-depression studies; many of those with property in Pennsylvania and Massachusetts no longer have it; many who relied upon wages now rely upon others for their support.

The experience of the national government in making expenditures under Title I of the Social Security Act furnishes more recent information. For instance, in February 1937, 38.8 percent of all persons over 65 in Colorado received public assistance. In Oklahoma the percentage was 44.1, and in Texas 37.5. In 10 States out of 41 with plans approved by the Social Security Board more than 25 percent of those over 65 could meet the residence requirements and qualify under a means test and were actually receiving public aid.[54]

A recent study made by the Social Security Board (set out in detail in tabular form in the Ap-

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[52] *Report on Old-Age Pensions* (Mass. Comm. on Pensions) Senate No. 5 (1925), pp. 41, 52.

[53] *Old Age Security* (N. Y. State Comm.), Legis. Doc. No. 67, 1930, p. 39. See Appendix, pp. 66–67, Table 6.

[54] *Economic Insecurity in Old Age*, *supra*, p. 15.

pendix, pp. 75–77, Table 12), summarizes the available material as follows:

> Bringing together the dependency rates indicated by State surveys, census data, and recent estimates on unemployment among the aged and the latest available data on old-age assistance under the Social Security Act, we find the extent of dependency among persons 65 and over at the end of 1936 to be as follows: One-fifth of the aged in the United States were receiving old-age assistance, emergency relief, institutional care, employment under the Works Program, or some other form of aid from public or private funds, one-half to two-fifths were dependent on friends and relatives, one-eighth had some income from earnings, and possibly one-sixth had some savings or property. *Almost three out of four persons 65 or over were dependent wholly or partially on others for support.*[54a] [Italics supplied.]

The above quotation shows what an alarming proportion of those over 65 are dependent. And those who are dependent are increasingly unable to find support from private resources. Moreover, although reliance upon relatives for support of the aged is still widespread,[55] this reliance itself has

[54a] *Id.* p. 15.

[55] In New York, in 1929, of all persons over 65, 49.4 percent were wholly dependent upon relatives and friends. *Old Age Security*, Legis. Doc. No. 67, *supra*, p. 39. In Massachusetts, in 1925, 35.4 percent of dependent aged not cared for by charity were in this class. *Report on Old Age Pensions*, Sen-

disastrous consequences. The relatives on whom the aged depend themselves receive such low incomes [56] that in meeting the cash needs of the aged they often sacrifice the immediate welfare of the younger members of their families by forcing them to begin work before acquiring an education, and, by using up the resources of both old and young, intensify the problem for the next two generations.[57] The seriousness of the drain of older persons upon their younger relatives is apparent when we recognize that only in rare cases do children rise above the financial level which their parents have attained.[58] It is because of this fact that public welfare laws which require legally responsible relatives to support needy parents and grandparents are so generally ineffective in their operation, even when the aged have children to whom to turn.[59] For the large group of unmarried

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ate No. 5, *supra*, pp. 48, 49, 56. In Michigan cities, in 1935, one-third of all unemployed men over 65 were dependent upon relatives. Haber, W., and Stanchfield, P. L., *Unemployment, Relief and Economic Security* (1936), p. 189.

[56] See Brief for respondent Collector in *Steward Machine Co.* v. *Davis*, No. 837, p. 17; *Economic Insecurity in Old Age*, *supra*, pp. 37–52.

[57] *Hearings before the House Committee on Ways and Means*, *supra*, p. 220; Nassau, M. L., *Old Age Poverty in Greenwich Village* (1915), pp. 70, 72.

[58] *Report of the Pennsylvania Commission on Old Age Assistance* (1925), p. 41.

[59] Several studies show the inability of the family to care for its aged. In Wisconsin, in 1933, 30 percent of the persons receiving public old age assistance were dependent upon relatives at time of application. *Old Age Assistance in*

or childless the only resort is to charity or public support.[60]

Although many industrial establishments and worker groups have long been aware of the need for assistance to the aged worker and have, therefore, set up privately operated pension systems, group insurance, and trade union pension systems, these systems have, at most, a limited coverage and are frequently open to several fundamental objections.

Industrial pension systems, beginning in this country in 1875, have developed largely since 1900,[61] but even by 1930 only 4,000,000 employees in the United States and Canada (including employees in the railroad industry and other activities not covered by Title II of the Social Security Act) were covered by some 400 plans, and in 1931

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*Wisconsin* (State Board of Control, 1933), p. 23. In Pennsylvania, in 1924, the corresponding figure was 52.7 percent. *Report of the Pennsylvania Commission on Old Age Assistance* (1925), p. 43.

[60] Three-fourths of persons dependent on organized charity in their homes in Massachusetts, in 1924, had no living children. *Report on Old Age Pensions* (Mass. Comm. on Pensions, 1925), p. 115. The same was true of two-thirds of old people receiving charitable care in California. *Old Age Dependency* (Calif. Dept. of Social Welfare, 1928), p. 35. Over 91 percent of residents in fraternal and benevolent homes were single or widowed in Massachusetts in 1924. *Report on Old Age Pensions*, *supra*, p. 114.

[61] Wyatt, B. E., *Private Group Retirement Plans* (1936), p. 21; *Old Age and Disability Pensions*, Sen. Doc. No. 140, 70th Cong., 1st Sess., p. 99.

approximately 90,000 persons—one percent of the aged population—received pensions from these private systems. These pensions averaged, at most, $14 a week.[62] As industry begins to experience the increasing burden of the aged, many of these plans break down or are sharply curtailed, due to rapidly mounting costs and failure to set up proper reserves.[63] Moreover, these plans often reduce labor's freedom of movement, since benefits are usually dependent upon maintaining a connection with a particular company until old age is reached. The necessity of remaining with a particular employer in order to receive a pension often causes workers to submit to poor working conditions. And even this submission may not achieve its purpose, since these private pensions are usually pure gratuities which may be revoked at any time, or may be lost if the employer becomes insolvent.[64]

Group retirement plans, though much more satisfactory, are even more limited in coverage. From

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[62] Latimer, Murray Webb, *Industrial Pension Systems in the United States and Canada* (1932), pp. 869, 995–996. Data for the United States and Canada are not separately reported. The Bureau of Labor Statistics in 1928 found the prevailing monthly grant to be much smaller—$20 to $25 per month. Conyngton, M., *Industrial Pensions for Old Age and Disability*, Sen. Doc. No. 140, 70th Cong., 1st Sess., p. 124.

[63] Edwards, G., *Retirement Plans in Industry: Industrial Pension Plans Collapsing*, The Annalist (Nov. 20, 1925), p. 4; Latimer, M. W., *supra*, p. 939.

[64] *Economic Insecurity in Old Age*, *supra*, pp. 159–161.

less than 20 group annuity contracts in force in 1924, the number has expanded to 441 in March, 1936, but on the latter date only 350,000 employees were covered,[65] and in 1935 *only 6,559 persons in the United States and Canada received pension payments.*[66]

Another type of old age pensions is that provided by the workers themselves in the form of trade union pensions. In 1932 there were 25 unions, with a total membership of 1,500,000, with one or more forms of superannuation or permanent and total disability relief plans.[67] Benefits, however, have been small; the *total* payments to 1928 for this purpose in all unions was $21,500,000,[68] in 1928 the total beneficiaries numbered only about 11,000,[68a] and in 1934 only $3,912,940 was devoted to this purpose.[69] Failure to establish such plans on a sound actuarial basis, coupled with the fundamental difficulty of the high cost of any pension systems for old age, has resulted in either greatly decreased benefits or abolition of the plans.[70]

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[65] Wyatt, B. E., *Private Group Retirement Plans* (1936), pp. 24–25.

[66] *Industrial Pension Systems in the United States and Canada* (Industrial Relations Counselors, Inc., 1936), p. 19.

[67] Latimer, M. W., *Trade Union Pension Systems* (1932), p. 116.

[68] Appendix, p. 68, Table 7.

[68a] *Economic Insecurity in Old Age*, *supra*, p. 165.

[69] Appendix, p. 68, Table 8.

[70] "On the whole the conclusion seems inescapable that the trade union pension systems cannot much longer be main-

The funds made available through private charity, unfortunately, are wholly inadequate to cope with a problem of such great magnitude. Our brief in *Steward Machine Co.* v. *Davis,* No. 837, pp. 20–21, and the very revealing reports of the Treasury as to the amount contributed by private persons to private charities,[71] demonstrate that pri-

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tained on their existing financial foundations and that attempts to strengthen these bases will result in such losses of membership as to make this alternative course impossible * * *.

"The fundamental difficulty has been the unavoidable high cost of any pension system. Trade unions were handicapped from the start. The level of wages in the early nineteen hundreds in most trades was undoubtedly too low to permit the accumulation by wage earners, individually or collectively, of funds sufficient to pay adequate old-age benefits on sound actuarial principles. * * * The number of dependent and disabled members has grown faster than have the earnings of the members. It has simply not been possible for the active membership of the unions to support their dependent fellows and at the same time build up funds for their own future maintenance when sustaining employment is no longer available. Benefits of the type analyzed in this study are not the only ones which unions maintain; there are others for more immediate purposes so far as active members are concerned, such as for death, temporary disability, unemployment, and defense (strikes). It is entirely natural that the limited resources of wage earners should be devoted to immediate needs rather than to those of a distant and uncertain future." Latimer, M. W., *supra*, p. 125, 1924–1925.

[71] In July 1935 approximately 1,000 welfare agencies in 118 of the larger urban areas of the United States reported that relief from private funds amounted to only 1% of the total relief expenditures of all kinds in those areas in that month. A year later, with the diminution of Federal ex-

vate charity does not receive large enough subscriptions to care for even the unemployed, much less for the aged, whose need is chronic, and for whom there is little or no chance of rehabilitation. Indeed, in large part no attempt is made to do so.[72] As the magnitude of the problem becomes increasingly apparent, particularly since the recent depression, calls upon public agencies have rapidly increased. Almshouses[73] and hospitals for mental

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penditures for public relief, the same source accounted for only 2.7% of all relief expenditures. See brief in *Steward Machine Co.* v. *Davis*, No. 837, at pp. 21–22.

The inability of private charities to rise to demands of economic depression is strikingly illustrated by the following figures from the records of the Bureau of Internal Revenue: In 1928 the 248 persons whose incomes ranged from $1,000,000 to $1,500,000 contributed an average of but $30,000. In the same year the 3,000 persons whose annual incomes ranged from $300,000 upwards limited their total contributions to an average of $25,400 each. In 1930, however, when the demand for relief was more urgent and pressing the individuals in the groups receiving more than $300,000 reduced their average contributions from $25,400 to $19,600. In 1931 they contributed only $12,900. Instead of meeting the need for relief by proportionately larger contributions out of their incomes the wealthiest class retrenched to the extent of 50 percent as against 22 percent for all income tax payers. See Epstein, *Insecurity: a Challenge to America* (1936), p. 165.

[72] *Report on Old Age Relief* (Ind. Comm. of Wis., 1915), p. 11; *Old Age Dependency* (Calif. Dept. of Social Welfare, 1929), p. 29.

[73] At present there are probably between 40,000 and 50,000 people over 65 living in almshouses, a slight increase over 1923. *Number of Aged in Public and Private Institutions*, 1930, Monthly Labor Review, Feb. 1932, pp. 253–261; *Paupers in Almshouses* (U. S. Bureau of Census, 1923), p. 10.

diseases,[74] obviously very limited in capacity, care for only a relatively small part of the indigent aged. Chief reliance, of necessity, has come to be placed upon public relief.

State old age assistance benefits, beginning in Montana in 1923, have increased rapidly since 1930. By February 1937, 40 States, the District of Columbia and the Territories of Alaska and Hawaii had passed old age assistance laws.[75] An average of 17.2 percent of all persons over 65 was so benefited, at a cost for that month of $22,440,366.[76] During the year 1936, 1,111,054 aged persons received assistance under state laws at a cost of $161,919,996, an average payment of $18.76 per month.[77] Of this total, $80,710,674 was contributed by the Federal Government under the provisions of Title I.[78]

State laws, however, are subject to several inherent defects. Administratively, the migration of population during the course of a working life-

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[74] The number of persons over 65 in such hospitals probably slightly exceeds those in almshouses, and are becoming an increasingly large proportion of the total patients. *Statistical Abstract of the United States* (1934), pp. 73–74. In New York, in 1932, only 12.1 percent were paying patients. *44th Annual Report* (New York State Dept. of Mental Hygiene, 1935), p. 166.

[75] Appendix, pp. 69–70, Table 9.

[76] *Ibid.*

[77] Appendix, pp. 71–73, Table 10.

[78] *First Annual Report, Social Security Board*, Appendix IV, Table 15, p. 89.

time [79] has been thought to create insuperable difficulties unless very high residence requirements are imposed.[80] Financial burdens are heavily weighted against the poorer States. Population changes added to many western States workers who soon will require—indeed already require—old age dependency assistance.[81] States having a large num-

[79] In 1930 one white person out of three was not residing in his State of birth, and in many western States the white population was only half indigenous. *Fifteenth Census, 1930.* Population, Vol. II, p. 147; Golpin, C. T., and Manny, T. B., *Interstate Migrations Among the Native White Population* (U. S. Dept. of Agric., 1934), p. 7. Since the Civil War there have been three major and innumerable minor trends of migration in the United States. Goodrich, C., and others, *Migration and Economic Opportunity* (Report of the Study of Population Redistribution, 1936), p. 678. See Thornthwaite, C. W., *Internal Migration in the United States*, loc. cit., and Bulletin No. 1 of the same study; *Economic Insecurity in Old Age, supra*, pp. 197–200.

[80] Douglas, Paul A., *Social Security in the United States* (1936), pp. 35–36; S. Rep. No. 628, *supra*, p. 5; *First Annual Report, Social Security Board* (1936), p. 8.

[81] In Oregon, in 1934, 82 percent of those who applied for old age pensions were born outside the State. Kehrli, H., *The Operation of the Oregon Old-Age Pension Act*, Commonwealth Review, Vol. XVI, No. 5 (Jan. 1935), pp. 205–221; Oregon University, Bureau of Municipal Research, p. 215. In California, in 1924, 6 percent of the dependent aged were born in the State, and 33 percent had lived there less than 20 years. *Old Age Dependency* (Calif. Dept. of Social Welfare, 1928), p. 34. In Wisconsin, in 1931, 66 percent of the aged receiving public assistance were born in other States or were foreign born. *Old Age Assistance in Wisconsin, 1931* (State Board of Control, 1931), p. 8; *Economic Insecurity in Old Age, supra*, p. 200.

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ber of residents who work in other States would bear a part of the burden of old age dependency disproportionate to the taxable payroll within the State.[81a] Moreover, although all parts of the United States contribute to the production of wealth, sources at which that wealth may be tapped by taxation are highly colonized in a few favored States (cf. *Dane* v. *Jackson*, 256 U. S. 589, 599–600), with the result that many States are unable adequately to support educational institutions[82] and public welfare services,[83] much less to care not only for the tremendous burden of emergency relief imposed during the depression,[84] but also for the constantly augmenting group of aged persons.

The disparate financial resources of the States, together with the natural reluctance of any one State to act alone in imposing additional tax burdens on industry,[85] have resulted in establishing scales of benefits that vary widely, and are fre-

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[81a] The situation would be particularly acute in Connecticut (many of whose citizens work in New York City), in New Jersey (many of whose citizens work in New York City and Philadelphia), and in Indiana (many of whose citizens work in Chicago). Numerous other instances of the same kind could be cited.

[82] Norton, K., *American Educational Finance* in Studenski, *Taxation and Public Policy*, ch. VI, pp. 95–107; *Economic Insecurity in Old Age*, *supra*, p. 184–185.

[83] *Hearings on Economic Security Act* (S. 1130), Senate Committee on Finance, 74th Cong., 1st Sess., pp. 376, 378, 382.

[84] Appendix, pp. 74–75, Table 11.

[85] See brief in *Steward Machine Co.* v. *Davis*, No. 837, pp. 25–26.

quently absurdly low. The average payment for February 1937 was $18.76,[86] and in four of the States was no more than $4.02, $9.04, $10.05, and $10.46, respectively. Even these low payments, it is to be noted, were possible only because half of the benefits and a large part of the administrative costs were paid by grants of the national government made under Title I. These grants-in-aid, amounting to $11,030,459, were paid to 40 of the States.[87]

That part of the cost of the State programs *which the States alone will bear,* would, in the absence of Title II, by 1950 rise to approximately $700,000,000, even if the Federal Government continues to make subventions to States under Title I.[88] In view of the fact that the maximum amount spent by States and localities in any one year for relief of all age groups was less than half a billion,[89] it is wholly unlikely that they will be able, in the next few years, to raise the even larger sums required for permanent public support of the aged.

It might be asked why the old age dependency problem was not dealt with in some such fashion as was adopted in Title IX with respect to the problem of unemployment compensation. Two princi-

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[86] Appendix, p. 69, Table 9.

[87] Public Assistance Monthly Statistics for the United States (Social Security Board, February 1937), Vol. II, No. 2, p. 2.

[88] *Hearings before Senate Committee on Finance*, 74th Cong., 1st sess., on S. 1130, p. 84, Table III; *Economic Insecurity in Old Age*, *supra*, p. 205.

[89] Appendix, pp. 74–75, Table 11.

pal obstacles stood in the way of a tax-credit method of encouraging States to set up old-age plans similar to their unemployment compensation systems.

In the first place, the population structure varies quite widely as between different States. Some States have a higher percentage of aged than do other States. Interstate migration, moreover, makes prophecy of future population trends—which are difficult enough for the nation as a whole—virtually impossible in dealing with particular States.

A uniform rate of tax collection by the separate States, therefore, would either produce very different rates of benefit payable by them, or would bankrupt some state plans while yielding large surpluses in others. And as a matter of long-range planning, no one State could do much more than guess what benefit rates it could afford. A State with high benefit rates, moreover, would tend to attract those approaching old age, and that fact in itself would greatly complicate actuarial computations and jeopardize solvency.

In the second place, if benefits were to be based on past earnings, the migration of labor from State to State would make the keeping of records virtually impossible by separate States—not to mention the transfers of funds from State to State that would be necessary if the system were to operate equitably. See Brown, *Development of the Old Age Insurance Provisions*, Law and Contemporary Problems, Vol. III, pp. 186, 191–192.

The economic situation with respect to old age benefits is far different from that with respect to unemployment compensation. Individual unemployment, at least so far as it has been deemed possible to provide for compensation against it, is characteristically of short duration. It emerges in many forms; it does not affect more than a minority of the gainfully employed at any time, and many never experience it at any time. It is a product of human relationships which may be changed and controlled. Old age and retirement are, apart from death, inevitable. Once its incidence is felt it is, with rare exceptions, permanent, and its duration is appreciable. It emerges in the same form; it terminates in the same ways. While medical science and industrial practices and needs may move the age of onset and affect duration, its fundamental characteristics are not altered.

A standardized cost for unemployment benefits means variations in benefit rates and vice versa. But these are temporary, not permanent variations; and such migration as there is tends to reduce dispersion. The volume of migration, however, is but little affected; men give little weight in their calculations to a brief benefit which, they hope, they will never have to receive.

Provisions of benefits for the unemployed takes into account relatively short periods, but provision of benefits for the aged takes into account a life time. Administrative differences arising from

this fact are considerable. Migration may affect record and disbursement problems for unemployment compensation to but a slight degree, but each case of migration affects old age benefit needs and disbursements.

2. THE BENEFITS UNDER TITLE II ARE FOR THE GENERAL WELFARE OF THE UNITED STATES

In the light of the above facts, which were fully developed in extensive hearings before both the Senate and the House of Representatives,[90] we submit that whatever criteria be adopted, the old age benefits under Title II are for the general welfare. Certainly, these payments meet the tests suggested by Story:[91] the object—relief of the aged unemployed—is general, not local, in character, and the operation of the appropriation extends in fact throughout the nation. If national character of the problem be a criterion, it would be difficult to imagine a case in which clearer proof exists. If it be the quality of the results which flow to the general body politic, again the proof is overwhelming. Today no one, no matter how wealthy, can be sure that he will have funds in his old age. Even what he saves may be wiped out in a depression, and he cannot even know for how long an old age he must provide. Thus any man may justifiably fear for his financial poistion in his last years. The payments contemplated under

[90] See p. 48. *supra.*

[91] Story, *Commentaries on the Constitution of the United States* (5th ed.), Vol. I, Sec. 978.

Title II, and the policy therein embodied, will, for multitudes of people, eliminate the insistent dread of eventual poverty. Even those who are fortunate enough to possess small savings and who are willing to live upon the capital they have accumulated during productive years will no longer live in dread that it will be exhausted before they die. Moreover, the circle by which old age dependency promotes old age dependency will, in some measure, be broken. Family funds formerly required to support aged parents and grandparents may, instead, be used for pressing needs of the family which heretofore have so often wiped out its savings and forced it into debt. Benefit payments will constitute a valuable addition to purchasing power in periods of depression. It is for reasons such as these that 20 foreign countries have established old age insurance and pension systems.[92]

We do not contend that the inability of the States to perform a function creates a new national power to do so. However, where the national government already has a power, as it has the power to spend for the general welfare of the United States, the inability of the States to act may furnish the occasion for the exercise of the power. Thus when the question is whether an expenditure is for the general welfare, the fact that the States acting alone are, for many reasons, handicapped, is highly significant.

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[92] *Report of Committee on Economic Security*, *supra*, pp. 69–70.

Future aid by the States will, of course, be an essential supplement to Title II. Those who are not included within the benefits, those whose earnings were so low or whose working life was so short that the benefits under Title II are insufficient, those who need particular care due to sickness, accident, or other unpredictable hazard, must be cared for under the State old age assistance laws, financed in part through grants under Title I. Similarly, as business men have already realized,[93] existing and new industrial pension plans will provide valuable complements to the grants under Title II.

We submit, therefore, that an appropriation for the purpose of paying benefits to aged persons under Title II is for the general welfare of the United States.

### 3. THE PROVISIONS OF TITLE II ARE SOUNDLY DESIGNED TO PROMOTE THE GENERAL WELFARE

Even assuming that respondent has a standing to question whether the broad purpose for which expenditures are to be made under Title II is one which falls within the general welfare clause, we submit that he has no standing to question either the form or the propriety of any particular benefit or exclusion from benefit. Since the broad pur-

[93] It is interesting to note that few, if any, private pension plans have been abandoned because of the passage of the Social Security Act. Indeed, the passage of the Act, far from discouraging private pension plans, has stimulated new private plans. See Witte, *supra*, p. 33.

pose of Title II is for the general welfare, clearly the invalidity of any particular benefit or exclusion would not cause the whole statute to fall. Cf. *Field* v. *Clark,* 143 U. S. 649, 695. Respondent is, in other words, unaffected in any degree by the specific provisions. Moreover, the benefits under Title II are, like pensions, to be given or withheld in the discretion of Congress. *Walton* v. *Cotton,* 19 How. 355; *United States* v. *Teller,* 107 U. S. 64, 68; *Frisbie* v. *United States,* 157 U. S. 160.

**a. The simple means test provided by the statute**

By Section 202 (a) of the Act every qualified individual—defined in Section 210 (c) as one who has reached the age of 65, and who, before reaching 65, and after December 31, 1936, has earned total wages of $2,000 with respect to covered employment on at least one day in each of five different calendar years—shall be entitled to a monthly benefit payment, not to exceed $85, based on his past earnings. By Section 202 (c) no benefit payment is to be made to an otherwise qualified person so long as he is regularly employed.

The Act thus provides a practical means test which is well adapted to the problem of old age dependency of the industrial worker: no monthly benefits are payable unless the recipient is over 65 and not employed.[94] We have shown that the great proportion of industrial wage-earners who reach

[94] Sen. Rep. No. 628, *supra*, pp. 3, 10.

65 are either dependent upon their current earnings from employment or upon public, private, or family aid. Those workers who are 65 years of age or over, and are unemployed, may reasonably be deemed to be in need of the monthly benefits. The number of industrial workers who reach that age and are not in employment but have sufficient savings to carry them through the remainder of their life span is relatively small.

Any further qualifications by which to test the need of an aged person for benefit payments are open to several serious objections.[95] A strict means test puts a premium on indigency and discourages thrift, for those who had, by personal sacrifice, saved a sufficient amount to eke out a living in their old age would be barred, while those who have not saved would be supported by the public.[96] Many, if not most, of the needy aged have arrived at that state through no fault of their own; to compel them, as a requisite of old age benefits, to undergo the humiliation of a means test, would be grossly unfair. Many of this class undoubtedly would forego needed assistance which had to be purchased at that sacrifice, not only by themselves but also by their relatives.[97]

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[95] See, generally, *Report of Departmental Committee on Old Age Pensions* (London, 1919), pp. 9–10; *International Labour Conference* (Geneva, 1933), p. 121.

[96] Sen. Rep. No. 628, *supra*, p. 6; Bakke, *Insurance or Dole*, pp. 193–194.

[97] See Kiehel, *Unemployment Insurance in Belgium* (1932), p. 193; Hohman, *British Social Insurance and*

Purely as a matter of administration, a rigid means test under Title II would create an enormous problem. To be effective, it requires constant investigation of all of the property and income, not only of the applicant, but also of all those under an obligation to support him. In addition, the information must be verified from all possible sources. An indication of the administrative problem may be gathered from the fact that 5,000 investigators were required to administer a means test under the British Unemployment Assistance Act to 749,105 applicants and discovered from that total only 36,595 who were actually disqualified.[98] It goes without saying that the more effectively the test is applied, the more costly its administration, the more severe its humiliation, and the greater its discouragement of thrift. To the degree that the test is loosely applied, fraud is encouraged.[99]

Moreover, the gearing of the amount of benefits to employment and wages has the positive merit of promoting industry of workers. The greater the industry of the worker and the more he earns during his lifetime, the larger the benefits that will be

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*Minimum Wage* (1932), p. 235; Workuston, E., and Butler, C., *Disallowed: The Tragedy of the Means Test* (London, 1935); Burns, *Toward Social Security* (1936), p. 140.

[98] *Report of Unemployment Assistance Board* (1936), pp. 20, 76–78.

[99] *Report of Unemployment Assistance Board*, *supra*, p. 20; Folke, *Making Relief Respectable*, Annals of Am. Acad. of Political and Social Science (Nov. 1934), p. 158–159.

paid to him. This method of determining eligibility and the amount of benefits parallels the present incentives to industriousness. See p. 82, *infra*.

There can be no question of the power of Congress to decline to impose any means test. In *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, this Court said, in sustaining the Washington workmen's compensation law (p. 240):

> It is said that the compensation or pension under this law is not confined to those who are left without means of support. This is true. But is the State powerless to succor the wounded except they be reduced to the last extremity? Is it debarred from compensating an injured man until his own resources are first exhausted? This would be to discriminate against the thrifty and in favor of the improvident. The power and discretion of the state are not thus circumscribed by the Fourteenth Amendment.

See also *Chamberlain* v. *Andrews*, 271 N. Y. 1; *Howes Bros.* v. *Mass. U. C. Commission* (Mass. Sup. Jud. Ct.), decided December 30, 1936, 5 N. E. (2d) 720 (not officially reported); *Beeland Wholesale Co.* v. *Kaufman* (Ala. Sup. Ct.), decided March 17, 1937.

**b. Size and time of payment of benefit payments**

The Act provides that there shall be paid to qualified individuals over 65 years of age monthly benefits not to exceed $85 per month,[1] measured by a

[1] Until 1965 the number of monthly benefits 70-85 is not expected to exceed 0.05% of the monthly benefits paid. In

weighted percentage of the total wages paid over a beneficiary's years of work, wages to include only the first $3,000 of wages earned in any one year from any one employer [Section 210 (a)]. Both the age limit and the weighted scale of benefit payments are, we submit, eminently reasonable.[2]

The choice of 65 years of age for the beginning of benefits is based on both American and European experience. The retirement age in private American plans is predominantly 65, with 60 as the next most common age;[3] in state pension plans the balance between 65 and 70 is almost even.[4] Other Federal plans set the retirement age at from 62 to 70.[5] In foreign countries 65 is the most usual age,

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1980, it is estimated not to exceed 3.3%. From 1945–1955, the highest percent of benefits paid will range from $10–$25; from 1955–1975 it will range from $25–$40. In 1980 it is estimated that 15.7% of benefits will range from $10–$25, 26.9% from $25–$40, 35.8% from $40–$55, 18.3% from $55–$70, and 3.3% from $70–$85.

[2] The date of December 31, 1936, from which calculations of wages are to be made (Section 202 (a)) was necessary to allow sufficient time for proper wage records to be set up. The minimum sum of $2,000 over a period of 5 years upon which to base a benefit (Section 210 (c)) was necessary to justify the cost of administration.

[3] Latimer, M. W., *Industrial Pension Systems*, *supra*, p. 504, Table 9.

[4] Hearings on H. R. 4120, House Committee on Ways and Means, 74th Cong., 1st Sess., p. 78, Table 15; Sen. Rep. No. 628, *supra*, p. 5.

[5] Retirement of civil service employees—60–70. Act of May 29, 1930, c. 349, 46 Stat. 468, sec. 1 (U. S. C., Title 5, sec. 691). Army—62–64. Revised Statutes, sec. 1244 (U. S. C., Title 10, sec. 944); Act of June 30, 1882, c.

with many plans using a retirement age between 50 and 60.[6] The provision setting a maximum rate is justified by similar precedents.[7]

The measurement of benefits by wages and length of service[8] is also based on precedent both here and abroad. Length of service is a factor widely used in private industrial plans,[9] and is common in foreign statutes.[10] Measurement of benefits by wages is even more common, due to the encouragement which it gives to thrift and industriousness.[11]

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254, 22 Stat. 118 (U. S. C., Title 10, sec. 945). Navy—64–70. Revised Statutes, sec. 1444, as amended (U. S. C., Title 34, sec. 384); Act of July 1, 1918, c. 114, 40 Stat. 704, 709 (U. S. C., Title 34, sec. 396).

[6] *Public Old-Age Pensions and Insurance in the United States and in Foreign Countries* (U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 561), p. 98, Table II; *Compulsory Pension Insurance* (International Labour Office, Studies and Reports, Series M, No. 10), p. 212.

[7] See authorities cited in footnotes 4, 6, *supra*.

[8] See Appendix, p. 64, Table 1.

[9] Latimer, M. W., *Industrial Pension Systems* (1932), p. 105, Table 18.

[10] *Compulsory Pensions Insurance*, *supra*, p. 216 *et seq.*

[11] American Workman's Compensation and unemployment compensation plans, both public and private, overwhelmingly adopt wages as a measure for benefits, and wages are widely used in foreign plans for old age pensions, unemployment insurance, and health insurance. *Public Old-Age Pensions in the United States and in Foreign Countries* (U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 561), p. 98, Table 2; *Unemployment Benefit Plans in the United States and Unemployment Insurance in Foreign Countries* (U. S. Dept. of Labor, Bureau of

Moreover, in a national plan of benefits, relationship to wages fulfills a function which deserves emphasis It relates benefits to past standards of living. Thus it automatically adjusts payment to prevailing and differing standards of living in different parts of the United States, and in communities of different sizes. Yet this principle has not been carried to an extreme. Benefits have been weighted in favor of the lower wage groups, so that persons presently in middle age will not be discriminated against by having small total wages earned after December 31, 1936. This weighting also has the merit of assuring those who have worked for a comparatively long period of years for a small wage that they will receive a sufficient benefit to obtain a fair measure of independence.

**c. The lump sum payments under sections 203 and 204**

The provision of Section 203 (a), by which the estate of an individual who dies before attaining the age of 65 is paid a sum proportioned to the amount of wages the individual has earned is soundly designed to promote the fairness of the benefits. The payment is clearly incidental to the major plan of Title II,[12] but serves to ameliorate,

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Labor Statistics, Bulletin No. 544), pp. 27–78, 183–360; *Health Insurance* (Metropolitan Life Ins. Co., Monograph III), Chart I.

[12]Assuming 17–19 as the average age at which a worker will enter industry, approximately two-thirds of all workers will attain the age of 65. Dublin and Lotka, *Length of*

at least in part, the financial crisis and distress in the average family of low income when the income of the breadwinner ceases by reason of death. Moreover, the provision assures the worker that in distributing benefits the Government will give appropriate recognition to the part he has played in financing the Government by paying taxes under Title VIII.[13]

The other two provisions for lump sum payments are merely for convenience of administration. Ordinarily, administrative errors or delays in payment of benefits may be adjusted by increasing or decreasing subsequent benefits [Section 202 (c)], but in the event that an individual dies before an adjustment of an underpayment can be made in this way, a lump sum may be paid to his estate pursuant to Section 203 (c).[13a] Finally, for convenience in administration, if an individual has not worked for at least one day in each of five separate years since 1936, or has not earned a total of $2,000, there is paid to him or to his estate, instead

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*Life* (1936) pp. 14–16. Thus most of the benefits under Title II will be old age monthly pensions, not lump sum payments. Moreover most of the money paid under Title II will be for monthly benefits not lump sum payments. See Appendix, pp. 78–79, Tables 14, 15.

[13] The same considerations justify Section 203 (b), by which a person who, having become entitled to benefits upon reaching 65, dies before having received in monthly pensions an amount equal to 3½ percent of the wages paid him after January 1, 1937.

[13a] The converse situation, when an individual dies before an adjustment of an *overpayment* can be made pursuant to Section 202 (c) is covered by Section 206.

of a very small monthly benefit payment, a lump sum equal to 3½ percent of the wages he has earned between January 1, 1937, and the time he attained 65. Section 204 (a), (b).

**d. Exclusions**

At the outset, it should be noted that Congress is not required to reach every person who may be in need. As this Court said in *Miller* v. *Wilson*, 236 U. S. 373, 384:

> Dealing with practical exigencies, the legislature may be guided by experience. * * * It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest.

See also *Sproles* v. *Binford*, 286 U. S. 374, 396; *Silver* v. *Silver*, 280 U. S. 117, 123; *West Coast Hotel Co.* v. *Parrish*, No. 293, March 29, 1937. However, even assuming that the various exclusions from the grant of benefits are subject to a test as rigorous as those of a regulatory statute, we submit that they are completely justified.

The inclusion of agricultural and domestic labor [Section 210 (b) (1) (2)] would have involved tremendous practical difficulties. No records of wages are usually kept; wages are, in large part, in food, lodging, or, in the case of agricultural labor, percentage of produce. With respect to agricultural labor, contracts with tenants involving widely diverse provisions with regard to labor, seed, animals, machinery and crops would have

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created difficulties in determining whether an employee or an independent contractor relation existed. Casual labor [Section 210 (b) (3)] would also have involved difficulty in maintaining adequate records. Low wages and intermittent employment might render the benefits less adequate than assistance under Title I. Moreover, neither the agricultural worker nor the domestic servant is exposed to that aspect of the problem of indigent old age which is peculiar to the urban, industrial civilization.[14] Similar exclusions are customarily found in workmen's compensation acts (See *New York Central R. R.* v. *White*, 243 U. S. 188, 208) and their exclusion in old-age benefit systems is confirmed by foreign experience.[15]

Seamen [Section 210 (b) (4)] were excluded because the act contemplates benefits only for those employed within the United States [Section 210 (b)]; indeed, seamen have frequently been accorded a separate classification. Revised Statutes, Sec. 4501, as amended (U. S. C., Title 46, sec. 541); Act of March 4, 1927, c. 509, 44 Stat. 1424 (U. S. C., Title 33, c. 18). Most Federal employees [Section 210 (b) (5)] are already covered by a pension system,[16] and employees of States [Section 210 (b) (6)] are excluded because of an unwillingness of Congress to intermeddle in the affairs of a State by pensioning its employees. Similarly, the ex-

[14] See pp. 52–62, *supra*.

[15] *Compulsory Pension Insurance*, *supra*, p. 32 *et seq.*

[16] See note 5, p. 81, *supra*.

clusion of employees of charitable, educational, and other such organizations [Section 210 (b) (7)] is traditional.

The exclusion of the regularly employed aged [Section 202 (d)] is equally justifiable.[17] Such persons are presumably self-supporting, and in no need of benefits, and their exclusion materially reduces the expenditures under the statute.[18] Nor does the provision violate the Tenth Amendment. No compliance is "purchased", within the meaning of *United States* v. *Butler,* 297 U. S. 1. See pp. 95–102, *infra.*

Finally, taken as a whole, those excluded from the benefits of Title II are also excluded from payroll taxation. It has long been recognized that in classifying for the purposes of taxation, account may be taken of benefits received. *Norwood* v. *Baker,* 172 U. S. 269; *Union Transit Co.* v. *Kentucky,* 199 U. S. 194, 204; *Chicago, Burlington, &c. R'd* v. *Chicago,* 166 U. S. 226. It is equally reasonable in classifying for the purpose of ~~making~~ paying benefits to take account of taxes paid.

## IV

### Since Title VIII and Title II Severally Constitute Valid Exercises of Congressional Power, They Are Not Invalid When Considered Jointly

We have shown previously that the imposition of taxes by Title VIII constitutes a valid exercise of

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[17] See pp. 77–78, *supra.*

[18] Sen. Rep. No. 628, *supra,* p. 10.

the taxing power of Congress and that the payment of benefits provided in Title II constitutes a valid exercise of the power of Congress to provide for the general welfare as granted in Clause 1 of Section 8 of Article I of the Constitution. It is contended, however, that even though these Titles are valid exercises of federal power when severally considered, they nevertheless become invalid if considered jointly as parts of a plan. The short answer to this contention is that it has never been supposed that a legislative act which is validly based in each of its parts on a granted power can be rendered invalid because of the combination of the separately valid parts. The constitutional propriety of basing a statute upon an aggregate of federal powers was sustained in *McCulloch* v. *Maryland*, 4 Wheat. 316, and has never since been doubted. Recently this Court pointed out that, "The broad and comprehensive national authority over the subjects of revenue, finance, and currency is derived from the aggregate of the powers granted to the Congress * * *." *Norman* v. *Baltimore and Ohio R. R. Co.*, 294 U. S. 240, 303. Nor is it at all significant that the joining together of several valid exercises of federal power results in a legislative plan which bears a resemblance to some activity ordinarily engaged in by private persons. Thus in the Act sustained in *McCulloch* v. *Maryland, supra,* the resultant of the Congressional exercise of aggregate powers was the establishment of a bank.

A detailed examination of respondent's contention will show its fallacy. It is argued that the joint exercise of the valid powers to tax and appropriate renders both parts of the statute invalid in that (A) the use of the avails of the tax to finance the expenditures contemplated under Title II deprives the tax of its quality as a tax and characterizes it as an unconstitutional exaction, and that (B) Titles II and VIII taken together constitute a plan which is regulatory in manner and therefore violative of the Tenth Amendment.

A. THE TAXES IN TITLE VIII ARE NOT RENDERED INVALID BECAUSE LEVIED TO RELIEVE A DRAIN ON THE TREASURY OCCASIONED BY THE EXPENDITURES UNDER TITLE II

The contention that the taxes imposed by Title VIII are rendered invalid because of some connection with the benefits provided in Title II appears to have two aspects: (1) that the taxes are not true taxes because the avails are said to be earmarked; (2) that the taxes are not true taxes because the avails are said to be devoted to the benefit of a particular group.

1. It has already been shown that the avails of the tax are not in fact earmarked for any purpose. See Points I and II, *supra*, pp. 31–45. Congress may use the avails for any desired purpose. The direction contained in Section 201 of the Act constitutes only an authorization to appropriate and not an appropriation. However, even if the avails

were in fact earmarked, the taxes would still be taxes within the meaning of the Constitution. A tax is no less a revenue measure because imposed to raise revenue for a specific purpose. The Constitution itself specifies the uses for which taxes may be levied (Article I, Section 8, Clause 1) and this Court has recognized that the relationship between taxation and expenditure is a normal and necessary incident of the legislative function. *Knights* v. *Jackson,* 260 U. S. 12, 15; *Patton* v. *Brady,* 184 U. S. 608, 620. There can be no objection if an act levying a tax also specifies the uses to which the avails are to be put, if those uses are within the purposes permitted by the Constitution.[19]

2. It is said, however, that the taxes imposed by Title VIII are not taxes in the constitutional sense but are mere expropriations of one group for the benefit of another, since it is contemplated that the funds derived from taxing employers and employees will be devoted to paying benefits to employees.

The answer to this contention is found in the clear language of Clause 1 of Section 8 of Article I of the Constitution which, as this Court has said, grants "the power to tax for the purpose of providing funds for the payment of the nation's debts

[19] A more elaborate discussion of this point is contained in the Brief for the United States in *Cincinnati Soap Co.* v. *United States*, No. 659, October Term, 1936, pp. 28–33, to which this Court is respectfully referred.

and making provision for the general welfare." *United States* v. *Butler*, 297 U. S. 1, 64. If, then, the payment of benefits under Title II is an expenditure for the general welfare, then a levy for the purpose of providing funds for such expenditure must *ipso facto* be a tax within the meaning of the Constitution.[20] Certainly the levy is not any the less an exercise of taxing power because it is intended to defray an expenditure for the general welfare rather than for some other support of government.

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[20] Of course, a levy which provides funds for the general welfare may not be a true tax if it lacks one of the characteristics expressly required by the Constitution, *e. g.*, uniformity. In such case the supposed tax will be upheld only if it is a proper exercise of some other granted power. For this reason the Court in *Head Money Cases*, 112 U. S. 580, entered into an inquiry as to whether the tax there under consideration could be supported as a valid exercise of the power to regulate foreign commerce. It is to be noted, however, that the Court did not hold that the levy was not a valid tax. It may be that the Act was valid under either the taxing or the commerce powers. By the same token, the protective tariff is valid either as an exercise of the taxing power, *Hampton & Co.* v. *United States*, 276 U. S. 394, or of the commerce power. *Board of Trustees of the University of Illinois* v. *United States*, 289 U. S. 48. See also *Veazie Bank* v. *Fenno*, 8 Wall. 533. Since the taxes imposed by Title VIII do not violate either the canon of uniformity, or the prohibition against levying a tax on a State instrumentality, or any other constitutional limitation, and since (even if they be regarded as though they were earmarked) they are imposed for the purpose of providing funds for a general welfare expenditure, they must of necessity be true taxes.

The charge that the Act is an expropriation from one group for the benefit of another is obviously without substance. The determination that the expenditures are for the general welfare is a determination that they are for the benefit of the taxpayers as well as for the benefit of the direct recipients of the expenditures. A tax does not cease to be one for the general welfare because the application of the proceeds is to one group of the population.

It would seem obvious that the employees' tax in Title VIII would not cease to be a true tax even if the proceeds were to be devoted in the first instance to the employees themselves. If the law were otherwise, a gasoline tax, the proceeds of which were devoted to the construction of highways (thus benefiting motorists), would not be a true tax. Compare *Clark* v. *Poor*, 274 U. S. 554, in which a tax on motor carriers to provide funds for maintenance and repair of highways was upheld. It is not material that the avails of the tax are applied in the form of money rather than in the form of services. *Gillum* v. *Johnson* (Calif. Sup. Ct.), 62 P. (2d) 1037, 1044, not officially reported; *Beeland Wholesale Grocery Co.* v. *Kaufman*, decided by the Supreme Court of Alabama, March 17, 1937.

Nor is the employers' tax any the less a true tax if the avails from that excise are viewed as if they were devoted to financing the expenditures under Title II. "The constitutional power to levy taxes

does not depend upon the enjoyment by the taxpayer of any special benefit from the use of the funds raised by taxation." *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 268; *Carley & Hamilton* v. *Snook,* 281 U. S. 66; *St. Louis & Southwestern Ry. Co.* v. *Nattin,* 277 U. S. 157, 159. The levy of taxes upon one group to provide proceeds for expenditures for the primary benefit of another group is a familiar and ancient exercise of the power of taxation.[21] Indeed (as Prof. E. R. A. Seligman has pointed out in his *Essays on Taxation* (9th ed., 1923, p. 53), the whole system of local taxation in England has been developed from the so-called "poor rates" by which a tax is laid on occupiers of land to raise money to give to the handicapped poor and to set the ablebodied poor to work. 43 and 44 Eliz. c. 2 (1601); Halsbury's *Laws of England,* vol. 22, p. 521 *et seq.,* vol. 24, p. 1 *et seq.* Another example of a tax on one group to be expended for another group is the Massachusetts statute imposing income taxes for the express purpose of providing schools, upheld in *Knights* v. *Jackson,* 260 U. S. 12. The recent depression has called for a host of special local taxes such as sales taxes and special taxes on utilities for the purpose of providing funds for relief. See, *e. g.,* New York

[21] An early example is the enactment of the Maryland legislature in 1822 providing for the assessment of an annual fee of five dollars upon all lawyers in the state, the proceeds being earmarked for a pension to be paid to Luther Martin. Maryland Laws, December Session 1821, Resolution No. 60.

Laws of 1933, c. 815. *Southern Boulevard R. Co.* v. *City of New York*, 86 F. (2d) 633 (C. C. A. 2d). Reference may again be made to the state unemployment compensation laws. *Gillum* v. *Johnson; Beeland Wholesale Grocery Co.* v. *Kaufman*, both *supra*. All these are instances of the cardinal principle that a levy is a valid tax if its purpose is to provide funds for a valid expenditure. If the expenditure be within its powers the legislature may choose the subjects of the tax as it desires and if the tax falls on a class other than the class comprising the recipients of the funds, the tax is no more an invalid expropriation than if its proceeds were used to support any other governmental activity. To illustrate: a tax on employers or on any other class to finance relief expenditures for the sufferers from an earthquake or to finance a pension for the widow of a President of the United States would unquestionably be valid.

### B. TITLES II AND VIII JOINTLY CONSIDERED DO NOT CONSTITUTE AN INVALID REGULATORY SCHEME

Even though Titles II and VIII are valid separately considered, it is contended that they are invalid when considered together because they are said to constitute a regulatory scheme. The precise nature of this contention is not easily determined. It may be contended that the Act constitutes a regulation of employment in that it requires or induces retirement from employment, that the Act constitutes a scheme for compulsory insurance in-

valid under the Tenth Amendment, or that it constitutes a regulation of wages.

It is obvious from the face of the Act that it in no way constitutes a regulation of employment. The Act not only does not require retirement from employment, but it has no significant tendency to induce it. Indeed, since neither the employer nor the employee tax is levied with respect to an employee after the age of 65, the employment opportunities of elderly people will be increased. If the employee continues to work in a covered employment after attaining the age of 65 he will not be entitled to receive a benefit for any month in which he is employed, *but he suffers no reduction whatever in future benefits.* Thus he may continue to work as long as he desires or is able to without any fear of loss or diminution of benefits when he eventually retires or loses his job. On the other hand, since the benefits paid under Title II are small (in no case may they exceed $85 per month) and are proportioned to wages earned in the past, they constitute little if any incentive to retire.

The further contention that might be made is that the Act is regulatory in nature because it constitutes a plan for compulsory insurance. Whether or not the Act does provide an insurance plan within the accepted meaning of the term "insurance" is a doubtful question. It is to be noted that the correlation between taxes paid and benefits received is far from complete. As the Execu-

tive Director of the Committee on Economic Security has pointed out, the Act favors the workers who at this time are already middle aged or over and those whose rate of pay is small. (Witte, *Old Age Security in the Social Security Act,* 45 Journal of Political Economy, at p. 13.) Thus some of the taxpayers receive benefits greater than the amount of taxes paid with respect to them. On the other hand, some taxpayers will receive benefits smaller than the amount of taxes paid with respect to them, plus interest, since the maximum benefit payable under Title II is $85 per month. Moreover, the Act creates no contractual obligation with respect to the payment of benefits. This Court has pointed out the difference between insurance which creates vested rights and pensions and other gratuities involving no contractual obligations in *Lynch* v. *United States,* 292 U. S. 571, 576–577:

> War Risk Insurance, while resembling in benevolent purpose pensions, compensation allowances, hospital and other privileges accorded to former members of the army or navy or their dependents, differs from them fundamentally in legal incidents. Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. *United States* v. *Teller,* 107 U. S. 64, 68; *Frisbie* v. *United States,* 157 U. S. 160,

> 166; *United States* v. *Cook*, 257 U. S. 523, 527. On the other hand War Risk policies, being contracts, are property and create vested rights. The terms of these contracts are to be found in part in the policy, in part in the statutes under which they are issued and the regulations promulgated thereunder.

But whether or not the plan of the Act may properly be designated as old age insurance is in our view completely immaterial. A statute which involves nothing more than a valid exercise of the taxing power and a valid unconditional expenditure of benefits for the general welfare having no regulatory incidents must of necessity be valid whether the plan be labelled as insurance or not. In the statute considered in *McCulloch* v. *Maryland*, 4 Wheat. 316, the federal government through a valid exercise of its fiscal powers engaged in the business of banking. Here the federal government is certainly not entering into business, and if its activity can be designated "insurance", that fact is no more destructive of the validity of its exercise of its taxing and spending powers than was the designation of "bank" to the resultant of the exercise of powers in *McCulloch* v. *Maryland*. Since Congress has done nothing more than validly exercise two of its granted powers, the Tenth Amendment has no application. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 330.

Respondent contends that Title VIII "is an attempted statute to regulate the wage relation between employers and employees in employment within the several States * * *. It is a regulation of the terms of employment whereby the employer must as a part of the wage contribute something more for the old age of the employee" (Br. 59, 60). This contention is based on a false factual premise and upon unsound reasoning.

In making this contention respondent must be proceeding on the assumption that the Act constitutes an enforced addition by an employer to the wages of *his* employees. In the first place, it is manifest on the face of the statute, that the employer tax is not an enforced addition to wages at all. Even if it could in any case be an addition to wages, it is entirely within the control of the employer as to whether it should be added to wages or not. The statute does not prevent the employer from lowering the wages of his employees *pari passu* with the tax. Consequently, if in particular cases an addition to wages would result it would not be an *enforced* addition, and since it is not enforced it cannot possibly be a regulation.

In the second place, the employer tax does not constitute an addition by an employer to the wages of *his* employees. After the Act comes into full operation in 1949, many, and possibly all, of *his* employees may get nothing more than the equivalent of what they themselves paid in taxes plus in-

terest, although it is of course true that many employees will get more than such equivalent amount. All employees who die before reaching the age of 65, and all employees who work for less than 5 years after January 1, 1937, and all employees who receive total wages of less than $2,000 after January 1, 1937, will get only 3½ per cent of the wages received by them (Section 203 (a); Section 204 (a)). Moreover, many employees will not live a sufficient length of time to draw total benefits exceeding the amounts paid in by them as taxes plus interest. It follows that it is entirely speculative how many, if any, of the employees of a particular employer will receive in total benefits more than the equivalent of the amounts paid in taxes by the employees themselves plus interest.[22] Under these circumstances, it is nothing more than a play on words to speak of the Act as a "regulation" of the wage relationship.

Petitioner may contend, further, that even if the Act does not constitute a regulation of the wage relationship between an employer and his employees, it is nevertheless a regulation of the wage relationship between employers as a class and employees as a class. Putting aside the question as to whether there can be said to be a "wage rela-

[22] So much of the Old Age benefits as are attributable to interest will be met by the Old Age Reserve Account from the interest earned on the bonds held by it. Interest on these bonds will be paid like interest on other Government bonds and from the same sources.

tionship" between these two classes, it is manifest that there is no regulation in any sense because, as we have shown, there is no *enforced* addition to wages, since the employer class is legally free to recoup itself from the employee class.

Moreover, if the tax be a true tax, as we have shown earlier, it is immaterial that it affects the *financial* relationship between the two classes, *i. e.*, that employees as a class will receive more money than they would have received were it not for the statute. Compare *Barwise* v. *Sheppard*, 299 U. S. 32, 40–41.

We have shown earlier that the purpose of Title II of the Act is to pay benefits to aged persons, and that this purpose is within the granted power of Congress to make expenditures for the general welfare. Respondent now contends that, however valid the end of the statute may be, it becomes an unconstitutional regulation of the wage relationship merely because of the method of financing the expenditures. But if Congress may spend for the general welfare, it has a free choice of the means to be adopted for raising the funds provided that the means be not prohibited by the Constitution. "To a constitutional end many ways are open." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 291. Again we say, if the taxes of Title VIII are valid taxes, and if the expenditures of Title II are valid expenditures, the combination of the two cannot render the whole invalid.

It is true, of course, that the States themselves might, as a matter of law, lay similar taxes and make similar expenditures (although the States as a matter of economics have been unable to do so. See pp. 70–72, *supra*). But it cannot be contended that the tax and expenditures are, therefore, forbidden to the Federal Government. The same subjects of tax and objects of expenditure may be open to the States as well as to the Federal Government. Indeed, where the object of the expenditure is the general welfare of the United States it is presumably also, from the point of view of an individual State, for a public purpose. It cannot be doubted, for example, that grants for the relief of distress are within the power of Congress and the States alike. What was said in *Hoke* v. *United States,* 227 U. S. 308, 322, is particularly relevant with respect to the powers of taxation and expenditure:

> Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral.

These reasons make it clear that *United States* v. *Butler,* 297 U. S. 1, has no application here. There both the tax and the expenditure were deemed

to be regulatory in purpose and effect. The Court pointed out that a tax went into effect automatically when the Secretary of Agriculture determined that rental or benefit payments were to be made and was to cease when the payments ceased; the rate was fixed "with the purpose of bringing about crop-reduction and price-raising" (297 U. S. at 59). The expenditures were made only if the recipient entered into a contract to reduce his acreage. Here the recipient of the expenditure makes no contract and need follow no specified course of conduct.

Nor is *Railroad Retirement Board* v. *R. Alton R. Co.*, 295 U. S. 330, applicable. The statute there considered was enacted in the exercise of the power to regulate interstate commerce. The preamble stated its purpose to be the promotion of efficiency and safety of interstate transportation. It was not considered to be a taxing act by Congress, no attempt was made to base it on the taxing power, and it was considered by this Court solely on the basis of the commerce clause.[28] Moreover, the Railroad Retirement Act was clearly a regulation on its face. Section 4 of that Act provided in terms that retirement should be compulsory upon employees who attained the age of sixty-five. (The date

[28] This Court has held that a statute invalid if enacted under one of the federal powers may be valid if enacted under another appropriate power and limited in accordance with that power. Compare *Hill* v. *Wallace*, 259 U. S. 44, with *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

of retirement could be postponed in certain cases but not beyond the age of 70.) This provision was one of the essential features of the Act since one of its announced purposes was "to make possible greater employment opportunity and more rapid advancement of employees in the service of the carriers." We have already pointed out that the statute at bar not only does not require retirement from employment, but does not even induce retirement since a man may continue to work after 65 without any future reduction of benefits.

Moreover, the Railroad Retirement Act conferred express power on the administrative agency to substitute the statutory pension plan for existing voluntary pension plans of the carriers. This again was clearly regulatory. The statute at bar does not interfere with existing voluntary pension plans. In fact, large industrial enterprises have found it altogether feasible to correlate their pension plans with the benefit payments provided in Title II.[24]

Lastly it should be observed that the Railroad Retirement Act was held violative of the due process clause of the Fifth Amendment upon various grounds, none of which is here present.

In the opinion of the court below reference was made to a decision of the Supreme Court of Canada holding the Canadian Employment and Social In-

[24] See Wyatt, Birchard E., *Private Group Retirement Plans* (1936).

surance Act (25 and 26 Geo. V., c. 38) to be *ultra vires* the Dominion Parliament. *Reference re: The Employment and Social Insurance Act* [1936] S .C. R. 427, affirmed by the Judicial Committee of the Privy Council, *Attorney-General of Canada* v. *Attorney-General of Ontario,* Privy Council Appeal, No. 101 of 1936. It is to be noted that the Canadian Act was not intended by Parliament to be a taxing act; the preamble stated that it was enacted to discharge the obligations of the Dominion under the Treaty of Versailles. Indeed the Dominion powers of taxation and appropriation "were only faintly advanced by counsel for the Dominion in favor of the legislation." [1936] S. C. R., at 452. The Canadian Act expressly provided that the employer's contribution could not be deducted from the wages of the employee (Second Schedule, Part II, par. 8). To that extent perhaps it could be said that the Act was a regulation of contracts of employment. We have already pointed out that the Act at bar leaves the employer legally free to lower or raise wages as he desires. It should also be pointed out that an Old Age Pensions Act, whose validity does not appear to have been questioned, has been in force in Canada for a number of years. Revised Statutes of Canada, Chap. 156.[25]

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[25] The basic differences in structure between the British North America Act and the United States Constitution require that great caution be used in resorting to analogies from Canadian constitutional law. The British North America Act contains no general welfare clause such as is

## V

### These Taxes Do Not Contravene the Fifth Amendment

In Point IV, *supra*, pp. 87–104, we have disposed of the contention that Titles II and VIII taken together violate the Fifth Amendment by reason of the alleged taking of property from one class for the benefit of another. There remain two issues to be considered in the light of the due process clause. First, it may be urged that the selection of the specified employments for taxation is capricious, and second, that it is arbitrary to limit the tax to the first $3,000 of wages.

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contained in Article I, Section 8, clause 1 of our Constitution. While the Dominion Parliament has a residual power to legislate "for the peace, order, and good government of Canada", this general residual authority is sharply limited by the express grant of numerous *exclusive* powers to the Provinces. For illustrations of the special problems raised by the British North America Act see *Russell* v. *The Queen*, 7 A. C. 829; *John Deere Plow Co.* v. *Wharton*, 18 D. L. R. 353, [1915] A. C. 330; *Attorney-General for Canada* v. *Attorney General of Alberta* [1916], D. L. R. 288. Canadian constitutional law constitutes a system very different from our own and the words of Mr. Justice Holmes, with reference to Spanish law, in *Diaz* v. *Gonzales*, 261 U. S. 102, 106, are highly pertinent:

"When we contemplate such a system from the outside it seems like a wall of stone, every part even with all the others, except so far as our own local education may lead us to see subordinations to which we are accustomed. But to one brought up within it, varying emphasis, tacit assumptions, unwritten practices, a thousand influences gained only from life, may give to the different parts wholly new values that logic and grammar never could have gotten from the books."

As a result of the definitions in Section 811 (b), various types of employment, such as agricultural labor, domestic service in a private home, and for charitable institutions are not subject to tax. There is no violation of due process in these selections. "In the exercise of its constitutional power to lay taxes, Congress may select the subjects of taxation, choosing some and omitting others." *Sonzinsky* v. *United States,* No. 614, March 29, 1937. Further authorities that selections of the subjects for taxation are not open to judicial scrutiny are collected in the brief for the Collector in No. 837, *Steward Machine Co.* v. *Davis,* pp. 60–63.

But even if it be necessary to find affirmative justification for these exclusions, it appears upon examination that they are reasonable, in the main predicated upon considerations of administrative convenience, and are of the type long familiar in our internal revenue laws. See *Steward* brief, pp. 63–65, for collection of authorities.

The exemption as to agricultural labor [Sec. 811 (b) (1)] is plainly founded upon administrative policy. The difficulties involved in requiring the maintenance of proper records, the fact that farm laborers often receive a substantial portion of their wages in board and lodging the value of which could not readily be determined, the fact that a considerable amount of farm labor is seasonal and migratory—these considerations plainly justified

Congress in excluding agricultural employment from Title VIII.

Similar considerations are present in the case of domestic service in a private home. Section 811 (b) (2). In addition, it would often be difficult to determine when the employer-employee relationship exists, as when relatives of various degrees live with the family and assist with household duties. Further the spread of domestic service is so wide and the amount of tax realizable so small that enforcement of the tax might be impossible except at a prohibitive cost. Like factors are dominant in the case of casual labor not in the course of the employer's trade or business. Section 811 (b) (3).

The exemption of service performed by persons who have attained the age of sixty-five [Sec. 811 (b) (4)] is probably accountable for by the fact that most wage earners have passed the peak of their earning power at that age, and are presumably less able to pay a tax. Congress undoubtedly wished to lift the burden under those circumstances.

The exclusion of services performed by seamen on documented vessels was founded upon administrative policy.[26] Section 811 (b) (5). Such ves-

[26] The report of the House Committee on Ways and Means states (H. Rep. No. 615, 74th Cong., 1st Sess., p. 22):

"The administrative difficulty of following the wages of officers and seamen of crews was regarded as almost insurmountable. For instance, unless this exclusion were made, it would be necessary to keep track of the wages of Chinese coolies working on American ships."

sels are generally registered for foreign trade or enrolled or licensed for the coasting or fishing trade (c. 250, 41 Stat. 988, 1000), and the difficulty of determining to what extent services performed on such vessels are within the United States is obvious.

The remaining exemptions [Sec. 811 (b) (6), (7), and (8)] deal with service in the employ of the United States, a state or political subdivision thereof, and certain specified organizations of a charitable character. These are identical with the ones involved in the *Steward* case, and are commented upon in our brief therein at pp. 63–64.

Moreover, all the exemptions from the taxes imposed by Title VIII are given to persons who receive no benefits under Title II. It has long been recognized that in classifying for the purpose of taxation, account may be taken of benefits received. *Norwood* v. *Baker,* 172 U. S. 269; *Union Transit Co.* v. *Kentucky,* 199 U. S. 194, 204; *Chicago Burlington &c. R'd.* v. *Chicago,* 166 U. S. 226.

Nor is there any violation of due process in the provisions of Section 811 (a) which fix a limit of $3,000 to the taxable wages of any individual. Aside from the fact that neither respondent nor his corporation may challenge this classification since it obviously cannot injure them (*Roberts & Schaefer Co.* v. *Emmerson,* 271 U. S. 50, 54–55; *Premier-Pabst Co.* v. *Grosscup,* 298 U. S. 226), it

is clear that Congress has as complete discretion in determining how far it will exercise the taxing power as it has in selecting the subjects of taxation. Blanket exemptions of fixed amounts have appeared in numerous revenue laws and their presence has never been fatal. *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1; *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Knowlton* v. *Moore*, 178 U. S. 41; *Spreckles Sugar Refining Co.* v. *McClain*, 192 U. S. 397. The operation of an exemption above a specified amount should be no more objectionable.

That Congress may tax part of the employee's income in a specified manner without taxing all of it the same way is settled by *United States* v. *Hudson*, No. 97, January 11, 1937. There is even more justification here than in the *Hudson case* for treating this income specially. By exempting income in excess of $3,000, double taxation is, in general, avoided. Through the operation of the $2,500 credits as well as additional credits for dependents and earned income (see, *e. g.*, Sec. 25 of the Revenue Acts of 1934 and 1936), income under $3,000 is usually exempt under the general income tax law. While it is true that there may be some overlapping or some gaps at the dividing line, the avoidance of double taxation is achieved as a practical matter by exempting wages over $3,000 in Title VIII. *Hennefard* v. *Silas Mason Co.*, No. 418, March 29, 1937; *Colgate* v. *Harvey*, 296 U. S. 404, 419–422. And the existence of slight in-

equalities at the dividing line is surely not constitutionally objectionable. Cf. *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283; *Salomon* v. *State Tax Commission*, 278 U. S. 484.

Moreover, there is no objection to the $3,000 limit in measuring the excise upon employers. Plainly Congress could have fixed a *flat* rate of $30 per employee upon the exercise of the taxable privilege. Cf. *Sonzinsky* v. *United States*, No. 614, March 29, 1937; *Hylton* v. *United States*, 3 Dall. 171; *State Board* v. *Young's Market Co.*, 299 U. S. 59. Such tax would have been mathematically equal to the maximum tax now imposed by Title VIII for the year 1937 (i. e., 1% of $3,000). There is, therefore, nothing arbitrary in lowering the burden where the wages are less. Cf. *Clark* v. *Titusville*, 184 U. S. 329; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 81;[27] *Metropolis Theatre Co.* v. *Chicago*, 228 U. S. 61.

## CONCLUSION

Wherefore it is respectfully submitted that the taxes imposed by Title VIII are valid in every respect, and that the judgment of the Circuit Court of Appeals should be reversed and the cause re-

[27] The *Baltic Mining Co.* case has been overruled on another point (*Alpha Portland Cement Co.* v. *Massachusetts*, 268 U. S. 203, 218), but its authority on this point has remained unimpaired.

manded with instructions to enter judgment in favor of petitioners.

Respectfully submitted.

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